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NOTICE

The undermentioned Gazettes of India extraordinary were published upto 16th January, 1959:—

Issue No.	No. and date	Issued by	Subject
8	S. O. 116, dated 9th January, 1959.	Ministry of Information and Broadcasting.	Certification of films specified therein.
9	S. O. 163, dated 15th January, 1959.	Do.	Certification of films specified therein.
10	S. O. 164, dated 14th January, 1959.	Election Commission, India.	List of contesting Candidates in the Election to the House of the People from the Nagpur Constituency.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

PART II—Section 3—Sub-section (ii)

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administrations of Union Territories).

ELECTION COMMISSION, INDIA

New Delhi, the 14th January 1959

S.O. 167.—In exercise of the powers conferred by sub-section (1) of Section 22 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission

hereby appoints the following four officers, in addition to those appointed by its notification No. 434/4/56(1), dated the 8th January, 1957, as amended by its notification No. 434/4/58(1), dated the 22nd October, 1958, to assist the Returning Officer for the Nagpur Parliamentary constituency in the performance of his functions, namely:-

1. Sub-divisional Officer, Nagpur.
2. Sub-divisional Officer, Umrer.
3. Shri M. B. Panse, Deputy Collector, Nagpur.
4. Shri K. R. Bobde, Deputy Collector, Nagpur.

[No. 434/4/58(1).]

By Order,

S. C. ROY, Secy.

New Delhi, the 15th January 1959

S.O. 168.—Whereas the election of Shri Brahm Prakash as a member of the Lok Sabha from the Delhi Sadar constituency of that Sabha, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Ram Phal son of Raghu Nath Sahai, Advocate, 4544, Deputy Ganj, Sadar Bazar, Delhi;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE SHRI KARTAR SINGH CAMPBELLPURI, MEMBER ELECTION TRIBUNAL: DELHI.

Shri Ram Phal Bansal

Petitioner.

versus

- | | |
|-----------------------------|------------------------------------|
| 1. Shri Brahm Parkash | <i>Respondent No. 1.</i> |
| 2. Shri Shyama Charan Gupta | <i>Respondent No. 2.</i> |
| 3. Smt. Gurcharan Kaur | <i>Respondent No. 3.</i> |
| 4. Shri Hukam Chand | <i>Respondent No. 4.</i> |
| 5. Shri Tri-Bhuvan Dutt | <i>Respondent No. 5.</i> |
| 6. Sohdi Pindi Dass | <i>Respondent No. 6.</i> |
| 7. Shri Brij Mohan | <i>added u/s. 99 of R. P. Act.</i> |
| 8. Shri Om Parkash Sharma | <i>added u/s. 99 of R. P. Act.</i> |
| 9. Shri Om Parkash Jain | <i>added u/s. 99 of R. P. Act.</i> |

PETITION No. 140/57.

APPEARANCES:

Shri Ram Phal Bansal, Advocate in person assisted by Shri Baij Nath Aggarwal, Pleader—for the Petitioner.

Shri D. D. Chawla, assisted by Shri L. R. Gupta, Advocate—for respondent No. 1.

Shri U. M. Trivedi, Advocate—for respondent No. 2.

Shri Gian Singh Vohra, Advocate—for Shri Om Parkash Sharma.

Shri Kishen Chand, Advocate—for Shri Brij Mohan.

Shri K. K. Sharma, Advocate—for Shri Om Parkash Jain.

JUDGEMENT.

This petition was preferred by Shri Ram Phal Bansal, an elector of Delhi Sadar Constituency u/s. 81 of the R. P. Act, 1951 (as amended) for setting aside the election of respondent No. 1, Shri Brahm Parkash who was returned from the Delhi Sadar Constituency No. 396. The election was contested by six candidates and the polling took place on 3rd March, 1957. Respondent No. 1,

Shri Brahm Parkash was declared successful as a returned candidate and the votes secured by each of the contesting candidates were as follows:—

Mr. Brahm Parkash	63,848
Shri Shyama Charan Gupta	48,248
Smt. Gurcharan Kaur	1,360
Shri Hukam Chand	1,475
Shri Tribhuvan Datta Bhuvanesh	925
Shri Sohdi Pindi Dass	1,151

2. The election of the returned candidate has been challenged in the Petition on the allegations relating to certain corrupt practices alleged to have been committed by respondent No. 1, or his agent or by persons other than the said candidate or his election agent in the interest of respondent No. 1. It was also alleged that the result of the election in so far it concerns the returned candidate has been materially affected by the corrupt practices committed in the interest of the returned candidate by persons other than the candidate or his election agent or by person acting with the consent of the returned candidate or election agent. The particulars of the alleged corrupt practices were given in paragraph 7 to 28 (both inclusive) and these may be summarised as below at the outset:—

- (a) That on or about 1st March, 1957 a poster was published in Nagri character at the instance of Respondent No. 1 under the signatures of one Om Parkash Sharma, describing himself as Mantri, Yuvak Samaj, Saddar Bazar, Delhi, wherein certain accusations were levelled against the personal character of Shri Shyama Charan Gupta, respondent No. 2, and that the allegations contained in the said poster were false to the knowledge of respondent No. 1, or his agent or other persons who were responsible for the publication of the said poster and circulation thereof. That these posters in Hindi as well as in Urdu were printed in Gupta Printing Press and were circulated and pasted in conspicuous places on the walls in different parts of the Delhi Saddar constituency; and were issued with the object of prejudicing the prospects of the election of respondent No. 2.
- (b) That on or about 28th February 1958 a poster purporting to have been issued by a body known as Anti-Communal Front and printed by Gupta Printing Works was circulated at several places in Delhi Saddar constituency, under the heading 'Rashterpiya Gandhi ki Hatya etc.' and the same was published with the object to prejudice the election of respondent No. 2.
- (c) That on Friday, the 1st of March, 1957, Shri G. B. Pant, Hon'ble Minister for Home Affairs, Central Government addressed a public meeting and in the course of his speech made a promise to the traders of Delhi that the Government would so amend the sales tax law with regard to cloth as to levy it at the place of production and would also include it in the excise duty. And that this promise made by the Union Minister was calculated to interfere with the free exercise of the electoral right of voters by the traders of the Delhi Saddar constituency and amounted to undue influence as contemplated u/s. 123(2) of the R. P. Act.
- (c) That on or about 1st March, 1957, the Chief Commissioner of Delhi, with a view to render assistance to respondent No. 1 ordered the Commissioner of Sales Tax, Shri D. D. Kapila, to issue a notification reducing the sales tax from Rs. 6½ per cent. to 1 per cent. on jewellery made of gold and silver with effect from 1st March, 1957. That the said action of the Chief Commissioner was calculated to prejudice the election of respondent No. 2.
- (d) That on or about 20th February, 1957, Ch. Murari Singh, the Revenue Assistant and Requisition Officer, Delhi, a Government Gazetted Officer of the Government with a view to assist in the furtherance of the prospects of Shri Brahm Parash made an announcement that property belonging to the firm of M/s. Gulab Singh Johari Mal shall be acquired by the Government for the benefit of the Dera Ismail Khan Cooperative Society Ltd. That immediately after the said announcement, a poster was published and displayed under the signatures of the members of the society calling upon refugee voters to vote for respondent No. 1, and that it amounted to assistance by

Government officer in the election of Ch. Brahm Parkash respondent No. 1.

- (e) That respondent No. 1 or his agent or other person or persons on his behalf indulged in corrupt practices by promising cash payment to the voters brought back their ballot papers, without casting them so that the said purchased ballot papers might later on be dropped in the ballot box of respondent No. 1 by his trusted voters and this amounted to corrupt practice.
- (f) That Shri Gopi Nath Aman, Chairman of the Public Relations Committee of the Delhi Administration, a Government servant canvassed and persuaded the voters to cast their votes in favour of respondent No. 1 and that as such respondent No. 1 arranged and procured the services of the said Government servant in the furtherance of his election prospects which amounted to corrupt practice u/s 123(7) of the Act.
- (g) That the ballot boxes of the polling station No. 20 situate at M.B. Primary School, Sohan Ganj and polling station No. 37, M.B. School Basti Panjabian, Subzimandi, were found to be defective inasmuch as they could be opened without breaking the green paper seals of the said ballot boxes and that it contravened the election rules and amounted to corrupt practice.
- (h) That respondent No. 1 or his agent or other persons on his behalf threatened among others the voters of Gurkimandi, Nabi Karim, Andha Mughal etc., with total eviction and complete uprooting, in the event of their voting against respondent No. 1 and in favour of respondent No. 2 and this amounted to corrupt practice.
- (i) That respondent No. 1 or his agent or any other person on his behalf induced the voters by illegal gratification to vote in favour of respondent No. 1 at polling stations No. 37 and 62 and this amounted to a corrupt practice u/s 123(1), of the Act.

3. The petition was registered by the Election Commission, India, on 20th April, 1957 and was duly referred to the Tribunal constituted under Sec. 86 of the R.P. Act of 1951 on 20th May, 1957. The written statement in due course was filed by respondent No. 1 on 9th June, 1957 wherein preliminary objections were raised to the effect that the particulars embodied in the petition were vague and indefinite and as such the petition was liable to be dismissed with costs. It was submitted *inter-alia* that in the alternate, the allegations contained in paras 7, 8, 10, 11, 12, 13, 15, 18, 19, 20, 21, 23, 24, 27 and 28 were liable to be struck off on account of non-compliance with the requirements of Section 83 of the Act. Of the other respondents, Shri Shyama Charan Gupta respondent No. 2 and Shri Pindi Dass respondent No. 6 also filed their written statements. Respondent No. 6 raised some legal objections and impugned the correctness of the publication of the petition by the Election Commission, India, in the Gazette of India, Shri Shyama Charan Gupta, respondent No. 2 supported the petition in all its details as a consenting party to the petition. The following preliminary issues were struck by the Tribunal:—

- (1) Did not the Election Commission satisfy the conditions of section 86, R.P. Act, 1951 before referring the petition to the Tribunal for trial? If so, what is its effect on the Tribunal's competency to proceed with the petition?
- (2) Is the petition barred by time?
- (3) Are full particulars of the alleged corrupt practices given in the petition? If not, what should be the proper order?
- (4) Are the respondents entitled to copies of the annexures to the petition mentioned as schedules in the petition?
- (5) Have the annexures been properly verified? If not, what is its effect?

4. These issues were disposed of by the Tribunal's order dated 18th June, 1957 and the petitioner was granted time for filing an application of amendment of particulars relating to alleged corrupt practices. The petitioner accordingly applied on 12th July, 1957 for amendment of the particulars upon which objection was taken by respondent No. 1 and the then Member of the Tribunal allowed the amendment asked for by an order dated 22nd July, 1957 with the result that the petition with amended particulars was duly brought on the record. Both the orders of the Tribunal dated 18th June, 1957 and 22nd July 1957 shall form a part of this judgement and are appended as appendix (1). The amended petition

reveals that paragraphs 15A, 19A, 20A, 22A, 23A, 26A, 27A and 28A were added in the petition and fresh written statement by respondent No. 1 was filed on 1st August, 1957. This time the respondent on merits categorically denied all the material allegations in respect of the alleged corrupt practices and in para 29 of the written statement asserted—

"That the petition has been filed with a view to harass this respondent in a spirit of revenge for the defeat of the respondent No. 2 who is a close associate of the petitioner. The allegations contained in the petition are unfounded, false and vexatious to the knowledge of the petitioner. Assuming, but not admitting that any of the alleged corrupt practice was in fact committed, it was not by this respondent, or his election agent, or any other person with his consent."

The pleadings gave rise to the following issues:—

- 1-A. Were corrupt practices as mentioned in Section 123(4) committed by the respondent No. 1 or his election agents or any other person with the consent of the returned candidate or his election agent in the manner stated in paragraphs 7 to 15A of the petition?
- 1-B. If the aforesaid corrupt practices are proved to have been committed by a person other than those described in issue No. 1-A, were they committed in the interest of the returned candidate and has the result of the election in so far as it concerns him been materially affected?
- 2-A. Was the corrupt practice of undue influence [Section 123(2)] committed by the returned candidate, respondent No. 1 or with his consent or the consent of his election agent consisting in the delivery of the speech at a public meeting in Delhi by the Hon'ble Mr. G. B. Pant in the manner described in paragraphs 16 to 19(a) and 18-B and 19(a) and 19-B?
- 2-B. If consent is not proved, was the corrupt practice committed in the interest of the candidate and was the result of the election as regards him materially affected thereby?
- 3-A. Was the corrupt practice of obtaining or procuring etc. of any assistance from persons in the service of the government committed in furtherance of the prospects of respondent No. 1 [Section 123(1)] by the returned candidate or his election agents or any other person with the consent of either or both in the manner described in paragraphs 19(c) and 20 and 20-A?
- 3-B. If the said corrupt practice is proved to have been committed by a person other than mentioned, was it committed in the interest of the returned candidate and has the result of the election as regards him been materially affected?
- 4-A. Was the corrupt practice of obtaining or procuring etc. of any assistance from persons in the service of the Government committed for the furtherance of the prospects of respondent No. 1 [Section 123(1)] by the returned candidate or his election agents or any other person with the consent of either or both in the manner described in paragraphs 21, 22, 22-A?
- 4-B. If the said corrupt practice is proved to have been committed by a person other than those mentioned was it committed in the interest of the returned candidate, and has the result of the election as regards him been materially affected?
- 5-A. Were the corrupt practices of bribery [Section 123(1)] were committed by the returned candidate or his election agent or any other person with the consent of either or both in the manner described in paragraphs 23 and 23-A?
- 5-B. If the said corrupt practices are proved to have been committed by a person other than mentioned before, were they committed in the interest of the returned candidate and was the result of the election as regards him materially affected thereby?
6. Was the corrupt practice of obtaining or procuring the assistance of an alleged Government servant namely Shri Gopi Nath Aman committed by respondent No. 1?

NOTE (1) —Shri Gopi Nath Aman was a Government servant at the material time is denied and the petitioner is to prove his allegation.

(2) As the agent or other person mentioned in the opening sentence of paragraph 24 has not been specified anywhere, the petitioner will not be able to prove the commission of this corrupt practice by any agent or any other person].

7. Were the rules 18(2), 56(ii)(d) of R.P. Act (Conduct of Election and Election Petitions) Rules, 1956 not complied with at the election and was the result of the election as regards the returned candidate materially affected thereby?

8-A. Was the corrupt practice of undue influence committed by the returned candidate by meeting out threats of injury to the voters of Gurki-Mandi, Nabi Karim and Andha Mughal? (paragraph 26 of the election petition).

8-B. Was the corrupt practice of undue influence committed by respondent No. 1's election agent Shiv Charan Das Gupta by threatening voters in the locality of Andha Mughal and Nabi Karim? (para 27-A of the election petition).

8-C. Did Ch. Surat Singh and Shri R. N. Aggarwal exercised undue influence amounting to the commission of corrupt practice in Gurki-Mandi on or about 22nd March, 1957 in the interest of the returned candidate and did the commission of this practice materially affected the result of the election as regards the returned candidate? (para 27-A of the election petition).

8-D. Did Shri Mangal Dass commit the corrupt practice of undue influence by threatening voters in Andha Mughal in the interest of the returned candidate and was the result of the election as regards him materially affected? (para 27-A of the election petition).

8-E Did Shri Amar Nath Chawla commit the corrupt practice of undue influence by threatening voters in the locality of Nabi Karim in the interest of the returned candidate and was the result of the election as regards him materially affected? (para 27-A of the election petition).

9 Was the corrupt practice of bribery committed by respondent No. 1 or by Shri Mangal Dass and Shri R. N. Aggarwal with his consent as described in paragraph 28 and 28-A of the petition?

(NOTE:—Though it is not specifically mentioned, reading the two paragraphs together make it clear that Mangal Dass and R. N. Aggarwal are alleged to have acted with the consent of the returned candidate. It is the interpretation which I place on the expression at the instance and on behalf of the said respondent No. 1 appearing in the paragraphs. The objection of this interpretation by respondent No. 1 is not accepted).

5. The petitioner examined 52 witnesses while respondent No. 1 produced 72 witnesses including himself. Both sides adduced and relied upon a large number of documents in the form of letters, bill books, registers, photographs etc. On the close of the evidence of both sides, the Tribunal issued notices to three persons namely Om Parkash Jain, Om Parkash Sharma and Brij Mohan u/s 99 of the R.P. Act to show cause by an order dated 12th August, 1958 reproduced as below:—

“The evidence in the case has concluded and the petition is ripe for arguments. There are no less than 9 issues and one cannot say anything on any one of the issues at this stage without hearing the full dressed arguments of the learned counsel and the appraisal and assessment of the evidence adduced by both sides comprising of large number of documents as well as statements of no less than 124 witnesses examined in the case. But without incurring the risk of expression of opinion, much less any finding, when one digests the facts and circumstances relating to posters P.1 and P.2 admittedly printed in Gupta Printing Works and alleged to have been issued and published by Yuvak Samaj, Saddar Bazar, Delhi, on behalf of and in the name of Shri Om Parkash Sharma, Secretary, Yuvak Samaj, pertaining to the personal character and conduct of Shri Shyama Charan Gupta,

respondent No. 2; one feels *prima facie* to call upon Shri Brij Mohan, formerly General Secretary, D.P.C.C., Shri Om Parkash Jain and Shri Om Parkash Sharma, members of Yuvak Samaj to appear before the Tribunal and to show cause u/s 99 of the R.P. Act as to why they should not be named in the decision for having indulged in the committal of corrupt practice as contemplated u/s 123(4) of the R.P. Act, for the purpose of complete adjudication. The aforesaid three persons shall be deemed to have been impleaded as a party u/s 99 of the R.P. Act and shall have the opportunity to cross-examine any of the witnesses who have deposed against them in the case and to adduce evidence in defence, if so desired. I order accordingly.

Furthermore, in order to avoid delay in the proceedings and for the purpose of elucidation, Shri Des Raj, Proprietor, Gupta Printing Works in which posters Ex. P.1 and P.2 were admittedly printed and Shri Om Parkash Sharma shall be summoned as court witnesses.

In regard to the fixture of dates, as arguments are continuing in petition No. 117/57 and the respondent has to take up the arguments tomorrow, the 13th, the Tribunal shall remain occupied for a week or so in the other case. Shri Brij Mohan, Shri Om Parkash Sharma and Shri Om Parkash Jain mentioned above shall be summoned accordingly to appear before the Tribunal on 21st August, 1958 and the court witnesses on 22nd August, 1958. Processes to be issued just today by court on the addresses on the record. A copy of the process shall be sent by registered post to ensure service and to avoid delay in the matter. To come up on 21st August, 1958."

The newly added respondent in response to notices got some of the PWs, resummoned for further cross-examination and also produced evidence oral as well as documentary in defence.

6. Now before proceeding issue-wise and entering into the discussion of the voluminous evidence relating to the issues, it is necessary as well as desirable to refer to standard of proof or say general principles governing the appraisal and assessment of the evidence required for the proof of corrupt practices in election cases. In this respect, Shri Ram Phal petitioner submitted that the proceedings are civil and not criminal and referred to Section 90 of the Act. It was argued that in the matter of trial, the provisions of Civil Procedure Code pre-eminently apply, of course, subject to the provisions of R.P. Act where it is so provided. Reliance was placed on a decision of the Election Tribunal, Aligarh in petition No. 184/1957 'Sheo Dan Singh vs. Kishori Ram Singh', and reference was made in particular to the observations of the Tribunal of the Aligarh Tribunal on pages 20 and 21 of its order wherein the Tribunal observed as follows:—

"The proceedings before election Tribunal are purely civil in nature inasmuch as Section 83(c) of the Act prescribes that the petition shall be signed by the petitioner and verified in the manner laid down in the C.P.C. and that in sub-section (1) of Sec. 90 it has been expressly provided that every election petition shall be tried by the Tribunal as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure in the trial of suits and in sub-section (2) of the same section, provisions of I.P.C. have been made applicable as well as the Tribunal has been given powers which are vested in a court under the C.P.C. for discovery, inspection, attendance of witnesses etc."

The learned Tribunal concluded with the remark that when the entire proceedings before the Election Tribunal partake the nature of civil suit, it is difficult to reconcile with the view that for assessment of evidence the standard of proof should be as in criminal cases. Reference was also made to the decisions of the Tribunals reported in XII, ELR, 34 in the case of Mast Ram and IV, ELR, 73 (Sudhansu Sheikhar vs. Standra Nath Vasu) by Mr. Ram Phal and on the strength of this authority the petitioner maintained that the cases, in which standard of proof of criminal cases was at all applied were cases of bribery only.

7. On the other hand, Shri Chawla learned counsel for respondent No. 1, arguing in reply asserted that Aligarh Tribunal's decision was erroneous and moreover the facts also differed and are not applicable to the facts of this case. It was submitted that there is a universal rule that when corrupt practices are to be dealt with then the standard of proof would be like a criminal case. Reliance was placed on X, ELR, 461, in the matter of 'Devasharan Sinha vs. Sheo Mahadev

Prasad' and others decided by Election Tribunal, Patna, (2), 11, ELR, 415 a decision of Election Tribunal Allahabad in the matter of 'Ganga Pershad Pathak vs. Salag Ram Jaiswal' (3), VIII ELR, 105 in the matter of 'K. N. Gairola vs. Ganga Dhar and others' wherein it was held that the onus is on the petitioner and it never shifts and the standard of proof is that of a criminal case. It was pointed out that the allegation in that case was one of undue influence, (4), III, ELR, 488 is another decision in the matter of 'Jyostna Chander vs. Mehrab Ali and others', Election Tribunal, Gauhati, wherein, it was held that the standard of proof is that of criminal charge and the onus never shifts. Reference was made to some other cases embodied in Sen & Poddar, Election cases, pages 665, 764, 822, 840. Finally, reliance was placed on the Supreme Court decision reported in 1957, S.C., 444. In this case, their Lordships of the Supreme Court has observed that—

"It should not be forgotten that the charges of corrupt practices are quasi-criminal in character and that the allegations relating to them must be sufficiently clear and precise to bring home the charges to the candidates and judged by that standard."

Mr. Chawla argued that in the Amended Act, only major corrupt practices have been retained and each entails penalty and as such they are to be treated as charges and should be brought home to the respondent as a criminal charge. The argument precisely is that it requires strict proof because the question of disfranchisement is involved and some of the offences are penal, and as such the implication is that the petitioner is to prove to the hilt all the elements of the charges and that the onus never shifts. The counsel concluded that in the matter of strict rules of criminal charge and to bring home to the respondent, the petitioner cannot absolve himself from this responsibility by merely saying that the respondent did not do this or that.

8. In the light of the above authority cited at the Bar, I think it is well settled by this time that corrupt practices are in the nature of a criminal charge and the proceedings are more in the nature of criminal than civil proceedings inasmuch as many corrupt practices are also offences in the I.P.C. This is correct that in Criminal Procedure the accused cannot be compelled to go into the witness box and there are other divergent provisions relating to the Civil Procedure Code which apply in the trial of election petitions. But the Act makes the corrupt practices as indictable offences as well, for instance, section 171(g) of the Penal Code specifically refers to elections where the points required to be proved are (1) that an election was impending (2) that the accused made or published a statement (3) that it purports to be a statement of fact (4) that it related to the personal character or conduct of the candidate (5) that it was published with intent to prejudice the election and (6) that it was false or the accused had any reasonable ground for believing it to be true. It will be seen that all these ingredients constitute the corrupt practice as laid down u/s 123(4) of the Act which forms the main subject of controversy in this case. I am, therefore, of the considered opinion that the charges of corrupt practice in election are of quasi-criminal nature and the burden of proof lies on the petitioner to establish such charges beyond any doubt as held in VIII, ELR, 105 and XII, ELR, 107. On the top of it, this principle has been approved by the Supreme Court as mentioned above in a decision reported in A.I.R., 1957, S.C. 444 quoted above. The same view has been adopted in the decision of Jabalpur Tribunal in petition No. 1(403) of 1957 Shri H. V. Kamath vs. Magan Lal published in Gazette of India, dated 5th February 1958 upon which Shri Ram Phal has himself relied in relation to corrupt practice u/s 123(4) of the Act. There is yet another principle which is to be born in mind in the appreciation of evidence and this is laid down in another Supreme Court decision, reported in IX, ELR, 231, (Jagan Nath vs. Jaswant Singh) viz.

"It is well settled that the success of a candidate who has won at an election should not be lightly interfered with though care has to be taken at the same time to safeguard the purity of the election process and to see that the people do not get elected by flagrant breaches of the law and corrupt practices."

9. This brings me to the issues which of course shall be adjudged in the light of the principles enunciated, above.

Issue No. 1.

This issue relates to the publication of posters Ex. P.1, P.2 and P.3 copies of which were attached with the petition as annexures A, B, C. The allegations made

in Ex. P.1 and P.2 as embodied in the petition in English rendering read as follows:—

- (A) Why does the respondent No. 2 hold out as B.A. with honours when he is only a Matriculate in English?
- (B) Why has the respondent No. 2 taken forcible possession of the R.S.S. godown?
- (C) Why is it said that respondent No. 2 has swallowed a large amount of R.S.S. fund?
- (D) Why did respondent No. 2 go out of Delhi when his turn to proceed to Goa arrive on the excuse of some of his relatives being ill?
- (E) Why did respondent No. 2 misappropriate the sale proceeds of a jeep belonging to R.S.S.
- (F) Why did respondent No. 2 accuse the displaced persons after having come to Delhi of having destroyed the entire culture and language of Delhi in a speech delivered by him at a public meeting at Ghazialbad?
- (G) Why should the public elect respondent No. 2 a worthless and cowardly person to the Parliament?

The heading of the poster is 'Khud shishe ke makan men balthen hain aur dusron per pathar phaink rahe hain' and purports to have been signed and issued by Om Parkash Sharma as Secretary, Yuvak Samaj, Saddar Bazar, Delhi. This poster was admittedly printed by Gupta Printing Works, Esplanade Road, Delhi and it was alleged *inter-alia* that the posters P.1 in Hindi and P.2 in Urdu were displayed in several places in the Delhi Saddar constituency. This issue No. 1 also relates to another poster alleged to have been printed by Gupta Printing Works and issued by a body known as Anti-Communal Front. This poster Ex. P.3 is styled 'Rashtrapita Gandhi ki Hatya etc.'. It was alleged *inter alia* that this poster P.3 furnished a clear suggestion to the public that respondent No. 2 was one of those who were directly or indirectly involved in the murder of Gandhiji. A copy of this poster was also annexed with the petition marked (C).

10. Now this issue No. 1 has more than one phases and facets and the plethora of evidence coupled with the exuberance of the comments on the statements of witnesses in the course of lengthy arguments has all the more made it complex and complicated inasmuch as the full particulars regarding the publication of posters Ex P.1 and P.2 were not specifically set out in the petition initially and subsequently on amendment also only names of some persons were mentioned who were alleged to have been responsible for the publication of these posters. It was at the stage of evidence accordingly that a plot or conspiracy alleged to have been laid down in this connection was introduced by examining P.Ws. 36, 37 & 38. Similarly another factor about the admission of Joti Parshad, Proprietor, Gupta Printing Works giving out the names of real person or persons who were responsible for the publication during the talk with the Sub-Inspector, Tirath Ram at the time of search was also introduced after the amendment stage of the particulars of the petition. These factors brought on the record in the course of the evidence have thus given rise to various phases and facets as said above which shall have to be discussed and determined separately for the purpose of proper elucidation and understanding of the points involved in the issue. The other difficulty which presents itself is that the issue bristles with certain angularities as well as anomalies when put to test in the light of the evidence adduced and the arguments advanced for and against. I would, therefore, propose to give a resume of the two different versions propounded by the two sides and then formulate the main points which warrant the decision of the Tribunal in the determination of this all important issue.

11. In this context the story of the petitioner; as culled and assembled from the facts given in the original petition as well as the amended petition in connection with the publication of posters P.1 and P.2 relating to Shri Shyama Charan Gupta, respondent No. 2 as well as the evidence adduced and the lengthy arguments advanced by Shri Ram Phal, the petitioner, put in nut-shell is as follows:—

That some 10 or 12 days before the polling a meeting was held at the studio of Shri Gulzari Lal Chopra in Nabl Karim area which forms a part of the Delhi Saddar constituency in which respondent No. 1, Shri Brahm Parkash along with Shri Shiv Charan Gupta, his Election Agent, Shri Brij Mohan, General Secretary, DPCC and Om Parkash Jain, a congress worker, participated and some speeches were also made and refreshments served. P.W. 36, Shri Vidya Rattan Soni, P.W. 37 Shri Des Raj Bhatia and P.W. 38 Dr. Ram Saran Dass also attended by

invitation although they were admittedly not congress workers. That in this meeting it so transpired that when tea and refreshments were served at about 9 p.m. and respondent No. 1 requested those present to vote for him and expressed his desire to leave the place; persons sitting in the front row of chairs began to disperse. But P.W. 36, P.W. 37 and P.W. 38 who were sitting in the back row coming from the back towards the door heard a talk between Shri Om Parkash Jain and Shri Shiv Charan Gupta who were a little ahead of them. That Ch. Brahm Parkash did not participate in the talk and the talk was between Shri Shiv Charan Gupta and Shri Om Parkash Jain. The latter delivered a written paper to Shiv Charan Gupta who after having seen the paper which formed the subject matter of a poster asked Om Parkash Jain to give it to Shri Brij Mohan with the remark that Brij Mohan was quite well up in such matters and would get posters printed and published. That Shri Shiv Charan Gupta also advised its publication one or two days before the polling day and spoke aloud about some of the items mentioned in the manuscript relating to jeep and the speech about the refugees. That on or about the 1st March 1957, posters P.1 and P.2 in Hindi and Urdu were published and displayed at various places in the constituency under the signatures of Om Parkash Sharma, Secretary, Yuvak Samaj. That in point of fact the body of the name of Yuvak Samaj had never come into existence and Om Parkash Sharma was mentioned as pseudo name by those who were responsible for the publication of these posters, namely respondent No. 1, Shiv Charan Gupta, election agent, Brij Mohan, General Secretary, DPCC, Shri Vas Dev, Office Secretary, DPCC, Shri Om Parkash Jain and Om Parkash Bahl, congress workers, Shri Des Raj and Joti Pershad, partners of Gupta Printing Works. That Om Parkash Jain was actually round at about mid-night on the night of 1st March 1957 pasting the said posters on the walls as seen by Ram Chander Goel (P.W.12). That after election was over a complaint was lodged by Shri Shyama Charan Gupta through his counsel Shri Ram Phal Advocate, petitioner, in the court of Shri R. L. Sharma, Magistrate, 1st Class, and a search warrant was obtained for the search of the premises of Gupta Printing Works where these posters were published. That during the search, Ex. P.9, the manuscript was taken into possession by Sub-Inspector, Tirath Ram (P.W. 4) in the presence of one Vidya Sagar, Manager, Upkari Cycle Works, (P.W. 34), Shri Kidar Nath Sahni, election agent of respondent No. 2 (P.W. 40), Shri Shyama Charan Gupta (P.W. 51) and Shri Ram Phal, petitioner (P.W. 52). It was also asserted that Joti Pershad and Des Raj Gupta gave out on the enquiry of S.I. Tirath Ram (P.W. 4) that Om Parkash Jain and Brij Mohan had come to deliver the manuscript P. 9 to them and on the enquiry of Sayama Charan Gupta, Joti Pershad also stated that Brij Mohan had taken the responsibility of publication if it was taken objection to. That the bill No. 635 was actually prepared in the name of Pradesh Congress Committee, Delhi and was sent to the Delhi P.C.C. for payment under the signatures of Des Raj Gupta. That the payment of Rs. 35/- now shown to have been made partly by Om Parkash Sharma was fictitious and that D.P.C.C. was responsible for the publication of these posters. That Brij Mohan, General Secretary, DPCC canvassed for respondent No. 1. That Ex. P.9, the manuscript is in the hand of Shri Brij Mohan as proved by Shri R. C. Goel (Ex. P.W. 12) and Shri Suraj Bhan (P.W. 33) who also produced Ex. P.W. 33/A and P.W. 33/B for the purpose of comparison. That the analytical study of these P.W. 33/A and B with Ex P.9 shows that they are in the hand of one and the same person. This evidence comprising of the conspiracy laid down at the place of Gulzari Lal Chopra coupled with the admission of Joti Pershad at the time of the search in respect of the publication of the posters and the bill No. 635 sent to the P.C.C., Delhi and other evidence oral and documentary produced in support of the allegations establish that the corrupt practice in question was indulged committed by persons working as agent of respondent No. 1 with his consent as contemplated u/s 123(4) of the R.P. Act.

12. The counter version adumbrated by the respondent's side in the course of evidence and arguments of Mr. Chawla, learned counsel for respondent No. 1 is this—That the contest as admitted by both sides was on party lines between two parties—Congress and Jan Sangh. That the defeat of respondent No. 2, Vice President of Jan Sangh was taken as a defect of the party and the petition was lodged in order to vindicate the honour of the party through Shri Ram Phal, Advocate who has been working in the R.S.S. and is a member of the Jan Sangh as a spearhead of the party. That the petitioner Shri Ram Phal is also a close friend of respondent No. 2 as admitted by him in his deposition. That the Jan Sangh party on account of two groups in the organization was disintegrated at one time before the elections when Shri Mauli Chander Sharma and Shri Basant Rao Oak left the party along with a large number of dissidents on account of ideological differences and that the party of Shri Shyama Charan Gupta, respondent No. 2 and that of Shri Balraj Khanna and Kidar Nath Sahni remained in power.

That the dissidents including Shri Om Prakash Jain who has been incharge of a branch of RSE as Mukh Shikshak and Om Prakash Sharma, Phul Singh Saini and several others under the leadership of Shri Basant Rao Oak formed a separate party known as Democratic Front in the first instance. But on account of Shri Oak's rejoining the Jan Sangh other persons formed another body known as Yuvak Samaj for social uplift work in the year 1956 under the Presidentship of Shri Ram Kishen and Shri Om Parkash Sharma became the General Secretary. That Yuvak Samaj had an office and held several meetings and at times in the days of Jaundice and Influenza epidemic rendered relief also by distributing medicines. That the members of this body who were aware of the shortcomings of Shri Shyama Charan Gupta thought of enlightening the public that he was not a deserving man and that for this purpose passed a resolution to issue a poster Ex. P. 1 and P. 2 wherein the allegations were made which were not false and were believed to be true. That the meeting held at the premises of Shri Gulzari Lal Chopra's studio was a congress worker's meeting of Nabi Karim area and was not open to the public, nor any refreshments were served. That in this meeting only respondent No. 1 Shri Brahm Parkash joined and Om Parkash Jain, Brij Mohan or Shri Shive Charan Gupta did not participate. That P.W. 36 Vidya Rattan Soni, P.W. 37, Des Raj Bhatia and P.W. 38 Dr. Ram Saran Dass did not attend the meeting at all and the version given by them was absolutely false. That this false evidence was cooked up in order to prove the consent of election agent and still they did not dare to connect respondent No. 1, Shri Brahm Parkash who was stated to have been away from the talk. That Brij Mohan was at a later stage introduced after the search because the bill was found to be in the name of D.P.C.C. and on the basis of the bill the story was developed and fabricated in order to implicate Brij Mohan as an agent of respondent No. 1. That the manuscript P 9 was a fictitious document and was planted at the premises of Gupta Printing Works as well as an imaginary talk was introduced by the petitioner and respondent No 2 with the collusion of Poti Pershad, a friend of respondent No. 2 and the assistance of Kidar Nath Sahni, Election Agent of respondent No. 2 and Vidya Sagar their own man. That this talk was not put to, much less supported by S.I. Tirath Ram to whom it was attributed. That the documents Ex. P.W. 33/A, P.W. 33/B and Ex. 'X' were shoved in at a much later stage by the petitioner and are fabricated documents. That they are not in the hand of Brij Mohan and the same have been fabricated in order to bolster up the case and to connect Brij Mohan and D.P.C.C. with the publication. That Brij Mohan was working in the office and had no time to move and even if he attended any meeting as alleged at Motia Khan, it was a public meeting and as such his attending that meeting has no bearing on the point of agency work of respondent No. 1. That the contents of the posters were supplied by Om Parkash Jain as borne out from his deposition and other dissident Jan Sangh workers and they believed the contents to be true. Furthermore, regarding the falsity of the contents the onus of which lay upon the petitioner, was not at all established. The respondent's case was that Brij Mohan or Om Parkash Sharma and others were not his agents and that he did not indulge or commit any corrupt practice and the story of the petitioner was a cooked up story supported by fabricated and manufactured evidence.

13. Now in view of the fact that the points involved in issue No. 1, are more than one and were introduced step by step in the course of evidence it is desirable to formulate these points in the form of sub-issues within the ambit of issue No. 1(A) which is a comprehensive one for the purpose of proper understanding of the discussion:—

- (i) Whether or not any body of the name of Yuvak Samaj existed and posters P. 1 and P. 2 were issued and published by Yuvak Samaj or this body has no existence?
- (ii) Whether or not the alleged plot or the conspiracy at the place of Gulzari Lal Chopra was laid as introduced in evidence and relied upon by the petitioner and is proved on the record?
- (iii) Whether the talk alleged to have been indulged during the search of Gupta Printing Press between the S.I. and Joti Pershad or Des Raj proprietors, Gupta Printing Works is proved on the record?
- (iv) Whether P. 9 is proved to be in the handwriting of Brij Mohan by the evidence adduced in support of it and the circumstances relating to that?

- (v) Whether Brij Mohan acted as a canvassing agent and in his capacity as General Secretary of DPCC he is deemed to have acted as an agent as defined in explanation appended to Sec. 123 i.e. with the consent of the candidate in the matter of publication of posters P. 1 and P. 2?
- (vi) Whether Vas Dev, Office Secretary, DPCC, Om Parkash Jain, Om Parkash Bahl, Joti Pershad and Des Raj are deemed to have acted as agent of respondent No. 1 as defined in explanation appended to Sec. 123 R.P. Act in the matter of publication of posters P. 1 and P. 2.
- (vii) Whether the bill No. 635 in the name of DPCC makes the body responsible for the publication of P. 1 and P. 2?
- (viii) Whether Ex. P. 3 a poster issued by Anti-Communist Front constitutes any corrupt practice as contemplated u/s 123(4) of the R.P. Act?

Besides the above noted points, the legal aspect of the question involved shall also be considered with regard to law of agency as applicable within the purview of the amended Act as well as the question of consent as contemplated under the explanation appended to Sec. 123 of the Act and the necessary ingredients or elements constituting corrupt practice u/s 123(4) of R.P. Act.

14. The petitioner Shri Ram Phal who is an Advocate argued the case himself and made very lengthy and elaborate arguments on this issue. The counsel took the Tribunal into the pleadings and the evidence adduced for and against in all its details and this laborious and lumbering discussion occupied the Tribunal for more than one month. The learned counsel however dealing with the statements of the witnesses touched more than one point simultaneously in a diffused and incoherent manner and as such it is difficult to incorporate the full rendering of the arguments of the learned counsel for both sides in the judgment. Of course, all the salient features of the arguments shall be dealt with at the proper place while dealing with the issues.

15. Now coming to the first sub-issue within the purview of issue No. 1 in respect of existence or non-existence of Yuvak Samaj, the allegation as embodied in paragraph 8 of the petition is that the posters were published in Nagri and Urdu character under the signatures of Om Parkash Sharma describing himself as Mantri, Yuvak Samaj, Delhi, and printed by Gupta Printing Works and were pasted at several places in the Delhi Sadar constituency. In paragraph 11, furthermore, it was alleged that the said posters were published and circulated by respondent No. 1 or his election agent or other persons acting with the consent of respondent No. 1, and in the interest of the returned candidate Shri Brahm Parkash by said Om Parkash Sharma who is or was a member of the said congress party and or is pseudo name of respondent No. 1 and that the said posters were pasted at conspicuous places in the Delhi Sadar Parliamentary constituency. Lastly amended particulars are given in respect of P. 1 and P. 2 in para 15(A) of the amended petition and it was alleged that the posters in Hindi and Urdu were got printed and published under pseudo name of Shri Om Parkash Sarma, Mantri, Yuvak Samaj, Sadar Bazar and Anti Communal Front by Shri Brij Mohan, General Secretary, Shri Vasu Dev, Office Secy., D.P.C.C., Shri Om Parkash Jain and Shri Om Parkash Bahl members of the congress party and active workers of respondent No. 1 and Shri Des Raj and Shri Joti Pershad, partners of Gupta Printing Works with the consent of respondent No. 1 and his election agent. It was submitted in the alternative that the said corrupt practices were committed in the interest of the returned candidate by M/s Shiv Charan Gupta, Shri Brij Mohan, General Secretary, Shri Vas Dev, Office Secretary of the D.P.C.C., Shri Om Parkash Jain and Shri Om Parkash Bahl members of the congress party and Shri Joti Pershad and Des Raj as mentioned above, so far it concerns respondent No. 1, and the result has been materially affected and, therefore, the election is void. It will be seen that the particulars of the corrupt practice as mentioned in paragraph 8 of the petition were attributed to Om Parkash Sharma describing himself as Mantri, Yuvak Samaj, Delhi, and in para (11), Om Parkash Sharma was said to be a member of the congress party or a pseudo name of respondent No. 1 and lastly under para 15(A), the name of Om Parkash Sharma is mentioned only as a fictitious name, and the name of half a dozen persons of the congress party along with the proprietors of Gupta Printing Works are alleged to have been responsible for the publication of Ex P. 1 and P. 2. The body of Yuvak Samaj or that of DPCC as bodies have not been specifically mentioned any where. Of course, the persons mentioned in

paragraph 15A have been mentioned with their official designations which they are alleged to have held at that time in the organizations. The Tribunal at the time of framing the issues, accordingly, gave a specific note underneath issue No. 1-A which reads as follows:—

“NOTE.—The scope of issue No. 1 will be confined to the commission of corrupt practices by *these persons* mentioned in para 15-A.”

On these premises, the evidence is to be adjudged in the light of the arguments advanced by both sides. Shri Ram Phal Bansal in the course of arguments appears to have taken his stand on the allegations made lastly, i.e., in paragraph 15(A) and contended that Om Parkash Sharma to whom notice u/s 99 of the R.P. Act was given by the Tribunal to show cause was not the man who had actually got the posters printed as stated initially in the petition and that there was no such person as Om Parkash Sharma. It was only a pseudo name. The petitioner urged that at the time of search warrant in the criminal court, he was impleaded as a party on the basis of the poster and notice was sent through Gupta Printing Works but he was not traceable and it appears that there was no such man nor any Yuvak Samaj. The argument precisely was that this Om Parkash Sharma block maker who has been examined before the Tribunal is not the Secretary of Yuvak Samaj nor any Samaj is in existence. Reference was made to the report of the Process server in the criminal court and it was argued that the man was not traceable. Reliance was placed on the statements of several P.Ws., namely P.W. 2 Durga Pershad; P.W. 11 Kishan Chand; P.W. 12 Ram Chander Goel; W.D. 14 Prem Lal; P.W. 17 Sham Lal; P.W. 18 Duli Chand; P.W. 19 Om Parkash; P.W. 20 Ram Kishen; P.W. 24 Danesh Kumar; P.W. 51 Shri Ram Phal petitioner and P.W. 52 Shri Shyama Charan Gupta respondent No. 2, and it was argued that these witnesses, (some of whom live in the same illaqa) have stated that there was no body of the name of Yuvak Samaj working in Saddar Bazar. Reference was also made to the statement of D.W. 12 who has stated in cross-examination that he is not aware who was the Secretary of Yuvak Samaj and cannot give the names of members of Yuvak Samaj as well as D.W. 17, D.W. 18, D.W. 21, D.W. 40; D.W. 41 and D.W. 49 who have stated that they do not know any thing about Yuvak Samaj.

17. On the other hand, Shri Chawla arguing on behalf of respondent No. 1 submitted that his client was, of course, not aware as to the working of the body of Yuvak Samaj but the statements of Om Parkash Jain, Om Parkash Sharma and Phul Singh Saini brought on the record furnish inassailable evidence that there were two groups in Jan Sangh party and at some stage one of the groups on ideological differences left the Jan Sangh under the leadership of Shri Mauli Chander Sharma and Shri Basant Rao Oak and that a separate body of the name of Democratic Front was formed in the first instance and some of the workers of Saddar Bazar formed a body of the name of Yuvak Samaj for social work. It was argued that Om Parkash Sharma who has appeared as his own witness and was subjected to lengthy cross-examination has given out the whole history how the body was formed and Om Parkash Jain examined as D.W. 68 earlier has also narrated the full circumstances under which this body came into existence and it worked in the days of jaundice epidemic as well as influenza when relief was provided to the sufferers through this body. Similarly Shri Phul Singh Saini who has been in the Jan Sangh and after having severed his connections with Jan Sangh become a member of Yuvak Samaj has also supported that the body of Yuvak Samaj was functioning and held meetings on more than one occasion.

18. Mr. Ram Phal however in reply denounced the sworn testimony of these dissidents of Jan Sangh on the plea that they are now in the congress fold and in the case of Om Parkash Jain in particular contended that he has been working during the days of elections for respondent No. 1 and had been coming to court even before he was impleaded as a party u/s 99 of the R.P. Act. Reference was also made to his conduct on the basis of some documentary evidence brought on the record after the close of all the evidence by way of separate applications that the evidence of Om Parkash Jain was tainted and unworthy of trust. This was of course admitted by the petitioner that Om Parkash Jain has been a member of Jan Sangh for a pretty long time and was expelled from the party for certain reasons. Shri Shyama Charan Gupta, respondent No. 2 in his deposition also admitted that Om Parkash Jain has been in the R.S.S. and subsequently remained a member of Jan Sangh party but he was expelled on disciplinary action. In view of these circumstances, the statement of Om Parkash Jain may be received with some caution but the hard fact that he has been in the Jan Sangh and was one of the dissidents, his statement cannot be thrown out regarding the formation of a new party of dissidents of Jan Sangh under the name of Yuvak Samaj. This

Is correct that in the determination of a point in dispute direct evidence adduced for and against is the best evidence but it is a truism that in cases where the evidence is conflicting as well as of partisan nature, human conduct and common course of natural events play an important role in the determination of such matters as enunciated u/s 114 of the Evidence Act. Now in this context it is not intelligible as to why and how a fictitious name of a body was introduced and one Om Parkash Sharma was dubbed as the Secretary of Yuvak Samaj. When one conceives the name of a body, it is not difficult to sponsor a body with the help of few persons who were agreeable to help the cause. Accordingly, the allegation of the petitioner namely that there was no body of the name of Yuvak Samaj and the name of Om Parkash Sharma was a pseudo name of respondent No 1 and that the posters were issued and published by members of DPCC does not stand to reason; inasmuch as the posters could have been issued under the name of 2/3 persons instead of any body if any such body was not in existence. It is common knowledge that during the days of elections several mush-room bodies spring up for some time and it is not beyond the range of possibility that this body of the name of Yuvak Samaj was also formed earlier in 1956 by the dissident members of the Jan Sangh who had their own grudge against the party in power (Jan Sangh) whose nominee was Shri Shyama Charan Gupta. The statement of Om Parkash Sharma in this connection furnishes full details with regard to this body so far so that he has mentioned about the meetings, the proceedings and the names of the office bearers as well as the resolution passed and the location of the office at his place.

19. Furthermore, it is also in evidence that Om Parkash Sharma was a familiar worker of Jan Sangh and was known to Shri Shyama Charan Gupta respondent No. 2 from whose statement the operative and relevant portion is reproduced as below:—

"I do not know one Khazan Singh who has a press in gali Umrao Singh. It is incorrect that Khazan Singh had gone with me on the last hearing.

Note:—The witness on the question whether he knows Om Parkash Sharma was prevaricating as to who that Om Parkash Sharma was. When asked that the Om Parkash Sharma against whom notice u/s 99 R.P. Act has been issued stated—

I have known him for the last 4/5 years. I have known him because he lives at about 100 yards from my office and he has his office where he is working for block making and printing. It is just possible that my people may have taken some printing work from him. I have been in the Jan Sangh party since 1951. I have been holding offices in Jan Sangh. I am Vice President of the Delhi Pradesh Jan Sangh in these days. I know Shri Mauli Chander Sharma who was in Jan Sangh. He has been the President of All-India Jan Sangh party and has been working as General Secretary. He has resigned but I do not know the reasons. It is not correct that there have been two groups in the Jan Sangh. There has been no enmass resignation of any group to my knowledge. It is absolutely wrong that Om Parkash Sharma had ever worked in Jan Sangh. I am not aware if Khazan Singh referred to above is real brother of Om Parkash Sharma or if he is in Jan Sangh. I do not know about the residence of Om Parkash Sharma. I know about his office as stated above. It is incorrect that I had ever enrolled Om Parkash Sharma or his wife as members of Jan Sangh."

In contra-distinction to the above statement, Shri Om Parkash Sharma has stated as below:—

"I live in Saddar Bazar. I have been living in Saddar Bazar for the last 25 years. I carry on business at Saddar Bazar for the last 12/13 years. I am doing business in the name and style of Hind Block and Printing Works. I was brought on the roll of Jan Sangh party along with my wife on the persuasion of Shri Om Parkash Jain and Shri Shyama Charan Gupta in the year 1952. I have been doing the work of the party for 2/3 years. Then I did not renew my membership for some years and stopped working with the party. Some other persons had also left the party including Mauli Chander Sharma. It was in 1956 that another society was formed by some persons who had left Jan Sangh party and it was named Yuvak Samaj, Saddar Bazar, Delhi.

I was chosen as Secretary of Yuvak Samaj body. During the last general elections, Shri Shyama Charan Gupta was Jan Sangh candidate. The view of the Yuvak Samaj people was that Shyama Charan Gupta was not a deserving candidate for Lok Sabha and we opposed his candidature. The Yuvak Samaj issued a poster in order to give publicity to the short-comings of Shri Shyama Charan Gupta. Ex. P. 1 is the poster which was got printed in Gupta Printing Works under my name as Secretary of the Yuvak Samaj. All these items 6 in number pertaining to the personal character of Shri Shyama Charan Gupta are correct."

20. In the light of the above it follows that Om Parkash Sharma was not a pseudonym but was already known to Shyama Charan Gupta, respondent No. 2 and the petitioner must have also known this fact because the petition was filed on the approach of respondent No. 2 as well as with his consultation as admitted by the petitioner in his statement. There is yet another piece of evidence viz. a letter No. 33 sent by Sharma along with Rs. 35/- towards part payment of the bill No. 635 (which forms the subject of another controversy about the payment of the bill of these posters) written on a printed form in the name of Yuvak Samaj. Now this letter No. 33 was also produced by Shri Des Raj Gupta, Proprietor, Gupta Printing Works and as such it cannot be said to have been fabricated by respondent's side. Be that as it may, it appears that the dissidents of Jan Sangh who had left the Jan Sangh party had formed a body of the name of Yuvak Samaj and the members of that body conceived the idea either for causing harm to the cause of Shyama Charan Gupta in his election campaign out of revenge and spite or for enlightening the voters and the public about the short-comings and antecedents of Shri Shyama Charan Gupta, respondent No. 2, as they claim in their deposition. This aspect however shall be considered in regard to other particulars of the issue at the proper place and time presently. The hard fact accordingly which emerges out from all these circumstances and evidence is that there was a body of the name of Yuvak Samaj and Om Parkash Sharma was its Secretary. That body might have worked only for a few days as a mushroom organization and may have secured the assistance of its sympathisers or the opponents of Jan Sangh. These questions however are yet to be answered. But to say that there was no body at all of the name of Yuvak Samaj is incomprehensible, more especially in face of shifting positions taken up by the petitioner in the petition itself and the evidence of some of the D.Ws. viz., D.W. 12 Ram Lal, a business-man of Kashmere Gate, Delhi, D.W. 21, P. R. Mittal, Proprietor, Mittal Manufacturing Co. Qarol Bagh, D.W. 32, Hem Chand Jain, Cloth Merchant, Saddar Bazar, Delhi, and an Ex-M.L.A., D.W. 52 Sultan Singh, a business-man of Saddar Bazar and D.W. 65, Shri Lal Chand Vats, an Advocate of Delhi. The operative and relevant part of the statement of these witnesses is reproduced below for facility of reference:—

D.W. 12 (Sh. Ram Lal).

"To my best recollection, there was some such society, i.e. Yuvak Samaj but I am not aware of their activities. At one time, they approached me also to subscribe to their Samaj. It was sometime in 1956 I might have made some subscription. I am not definite but it is just possible that some of the dissidents might have joined them and they came to me as well."

D.W. 21 (P. R. Mittal):

"There is a body named Yuvak Samaj, Saddar Bazar. I cannot say exactly who are persons running that body but Om Parkash Jain and Om Parkash Sharma are the workers of that body. I say that because they approached me for subscription. Those persons to my knowledge were the supporters of Jan Sangh on previous occasions"

D.W. 32 (Hem Chand Jain).

"I have known that a body styled Yuvak Samaj was set up during the days of Elections and one of its members approached me for donations but I did not pay anything and told him that their ideology was different from my views. To my knowledge the dissidents of Jan Sangh were working in Yuvak Samaj and I being a congressman did not wish to support them. Their office was somewhere in Saddar Bazar near Bara Tooti."

D.W. 52 (Sultan Singh).

"I know that there is a body known as Yuvak Samaj functioning in Saddar Bazar. The office of the Yuvak Samaj is located in Bara Tuti Saddar. I know Shri Phool Singh Saini and Om Parkash Jain who were the chief workers of the organization. Once they came to me for flood relief fund in the year 1956. Shri Om Parkash Jain was not working for respondent No. 1. Usually, he maligned Shri Shyama Charan Gupta respondent No. 2."

D.W. 65 (Shri Lal Chand Vats).

"I cannot say whether there were any personal differences between Shyama Charan Gupta and Om Parkash Jain but they had ideological differences. So far I know Shri Om Parkash Jain is almost vocal in the expression of his views. There is a body of the name of Yuvak Samaj which started in 1956. I cannot say whether that body was working in elections. The other active workers to my knowledge with Om Parkash Jain were Om Parkash Sharma and Phool Singh Saini. I do not know others. Some belonged to Youth Organization and others to Jan Sangh. I did not attend their office nor I was a member of Yuvak Samaj. Of course, I accompanied Om Parkash Jain on 2/3 occasions for raising funds and I was responsible for raising contributions. I did not see their literature but he discussed the objects of Yuvak Samaj with me."

21. The above quoted testimony of some of the DWs is of positive nature and as such is of more provocative value as compared to the evidence of the negative and partisan nature of the P.Ws. referred to above. In the result, the sub-issue (1) regarding Yuvak Samaj as formulated above for the proper understanding of issue No 1 is answered in the affirmative and shall be treated accordingly in the course of discussion on other sub-issues of issue No. 1.

22. Sub-issue No. ii.—

"whether or not the alleged plot or conspiracy at the place of Gulzari Lal Chopra was laid down as introduced in evidence and relied upon by the petitioner and is it proved on the record?"

It may be stated at the out-set that this part of the evidence was not mentioned in the petition either in the first instance or even after amendment in paragraph 15A. The other factor to be noted in this connection is that this feature of the evidence was introduced at a late stage of the petitioner's evidence by P.Ws. 36, 37 & 38. The facts on this sub-issue have already been stated at the time of setting out the version of the petitioner with regard to issue No 1 and need not be recapitulated. Furthermore, the deposition of the three witnesses examined on this point will reveal the position as to what it is. In support of this, the argument of the petitioner, Shri Ram Phal was that ten or twelve days before the polling day, a meeting was held at the place of Gulzari Lal Chopra in his studio in Nabi Karim and this meeting was also attended by P.W. 36, P.W. 37 and P.W. 38. It was argued that these three witnesses namely Vidya Rattan Soni, Shri Des Raj Bhatla and Dr. Ram Saran Dass have definitely stated about the talk which had taken place between Shri Shiv Charan Gupta, Election Agent of Respondent No. 1 and Om Parkash Jain about the manuscript of the posters. Adverting to the defence version on this point, Shri Ram Phal refuted the statement of Gulzari Lal Chopra (D.W. 17) and others and dubbed them as interested persons.

23. On the other hand, Shri Chawla, learned counsel for Respondent No. 1 dilating upon this point in the course of his arguments vehemently contended that the story on the face of it is false and unbelievable inasmuch as such a talk could not be hatched in a public meeting as alleged by the aforesaid PWs. It was argued that this was a clumsy attempt made by the petitioner to connect, Respondent No. 1 or his election agent with the manuscript. The counsel proceeded that the depositions of the witnesses again are discrepant and there has been improvement in the statement of these witnesses step by step. It was pointed out that one of the witnesses has stated that Shiv Charan Gupta and Respondent No. 1 and Mr. Jain arrived at the meeting together and the meeting commenced when they had come. The counsel contended that if they had come together the talk about the manuscript could have been safely made earlier instead of having made after the meeting in the presence of strangers as deposed by these witnesses. The argument was reinforced that according to their statement, this talk was communicated to Durga Pershad (P.W. 2) but no question was put to Durga Pershad.

When he was examined in October 1957 i.e. two months earlier to the recording of the statement of these witnesses in December, 1957 the learned counsel concluded that some of the persons mentioned to have been present at the time of the meeting were also examined as DWs namely Gulzari Lal Chopra (D.W. 17), Vas Dev (D.W. 24) and Jiwan Singh (D.W. 3) and they not only repudiated but categorically refuted the story given by these witnesses.

24. Before considering and analysing the significance of the question, it may well be considered in the light of the version given by the three witnesses on their face value. Shri Vidya Rattan Soni P.W. 36 states in the examination-in-chief that—

"While I came from the back side towards the door, respondent No. 1, Shiv Charan Gupta and Om Parkash Jain were going a little ahead of me. I heard their talk. Brij Mohan, Genl. Secy. of the congress was with respondent No. 1. I heard their talk. Ch. Brahm Parkash did not participate in the talk. The talk took place between Shiv Charan Gupta and Om Parkash Jain. Om Parkash Jain delivered a written paper to Shiv Charan Gupta. Shiv Charan Gupta saw the paper which was the subject matter of a poster and asked Om Parkash Jain to give it to Brij Mohan saying that he is quite well up in such matters and he would get posters printed and published. On reading the subject matter of the poster, he appreciated it and advised its publication one or two days before the polling day. On reading the subject matter of the paper, Shri Shiv Charan Gupta had said aloud that its contents had also related to the jeep and the speech about refugees. The poster related to respondent No. 2. The meeting dispersed at 10-30 p.m. I stayed there till the last."

In cross-examination, he has stated that there were 80/85 guests present in the meeting. That he did not know who organized the tea party. That Murari Lal Billa called him at about 6 p.m. and that he did not attend any other function during the election. He had no personal relation with Brij Mohan or Shiv Charan Gupta and that he had heard this talk while they were still in the shop and only 10/15 persons were left in the shop when the talk took place and other guests had gone away. That Gulzari Lal Chopra was near and Des Raj Bhatia, Murari Lal, Kharaiti Lal Narula and Jiwan Singh were also quite near him. Furthermore, in cross-examination, this witness has stated that in April or May, 1957, the petitioner Shri Ram Phal met him in the bazar and said that he had filed an election petition and he wanted to know if certain posters were displayed in the locality. He (the witness) disclosed that he had heard a talk which related to a poster which subsequently appeared. P.W. 37 Des Raj another witness on the point stated as below:—

"I attended that meeting. About 70/75 persons attended the meeting. I do not know who convened the meeting. I reached in the meeting at about 9-15 p.m. It had already commenced and the refreshments were being served. Among those who had attended the meeting were S. Jiwan Singh, Brahm Parkash, Shiv Charan Gupta, Om Parkash Jain, Shri Brij Mohan, Kharaiti Lal Narula, Murari Lal and Puran Chand. The meeting dispersed and people began to leave. About ten to fifteen persons only were left. Om Parkash Jain took out a manuscript of a poster and showed it to Shiv Charan Gupta and Shiv Charan Gupta on reading the matter said that the points relating to the refugees and jeep would prove quite effective. Shri Gupta asked Om Parkash Jain to give the manuscript to Shri Brij Mohan and that Om Parkash Jain and Brij Mohan were to arrange for its printing and publication. I remained at the place till the end."

In cross-examination, this witness has stated that he did not work for any candidate during the last elections. He did not take part in any meeting or any propaganda work of any party except the meeting referred to above. That he was not invited to any other meeting with which respondent No. 1 was connected. That he learnt that the meeting had been called by the congress workers but he did not know who had arranged for the refreshments. That he knew the petitioner for the last 3 years and the petitioner had helped to raise subscription of the Hari Mandir School and that he is the manager of the Hari Mandir School. That he did not disclose the contents of this evidence to any person except the petitioner in his office 5/6 months ago. That he had looked up the manuscript shown to Mr. Shiv Charan Gupta by Om Parkash Jain from a distance. He was unable to say if the manuscript which he had seen was the one Ex. P. 9 shown to him in court. He did not remember whether the paper of the manuscript was white or coloured. That respondent No. 1, Shri Brahm Parkash

had not read the manuscript and he could not say whether respondent No. 1 had heard the talk because he was ahead and was at a distance of about 15 steps where the talk took place

The third witness Dr Ram Saran Dass PW 38 stated as under —

"Gulzari Lal Chopra had come to me to extend the invitation. Amongst the persons who attended the meeting I can mention the names of Des Raj Bhatia, Mr Soni, Murari Lal Billa, Lekh Raj my father, etc. The meeting commenced at 9 p.m. Mr Shiv Charan Gupta spoke and asked for support of respondent No. 1's candidature. Meeting lasted till 10 p.m. The speeches were finished in half an hour and then followed the service of tea and refreshments to those present. After the meeting had dispersed, I heard Om Parkash Jain talking to Mr Shiv Charan Gupta. Mr Jain showed the poster to Mr Gupta and suggested that such a poster should be got printed and published. Gupta read the manuscript aloud and I heard. He asked Mr Jain to get it printed. I know Mr Om Parkash Jain. He was just present in court. The manuscript related to respondent No. 2 and the allegations were made therein about his being Matriculate only, his connection with RSS, misappropriation of jeep belonging to RSS and RSS funds and a speech about refugees delivered by him at Ghaziabad."

In cross-examination this witness has stated that except the one public meeting mentioned above he did not attend any other meeting during the elections. That he had shifted to Lajpatnagar where he stayed for about 6 months and returned to locality Nabi Karim 10/12 days before the polling as he had not found suitable place in Lajpatnagar. That he is a clerk of Pt. Harikishan Bhargava, Advocate. That Shiv Charan Gupta, Brij Mohan, respondent No. 1 and Mr Jain arrived at the meeting together. The meeting commenced after they had come. That the manuscript was on a full scape sheet of white paper. It was written in Hindi script. That he did not read the manuscript himself. That he could not say if the manuscript consisted of one or more sheets, and he did not remember if it was written on one side of the paper nor he could identify the manuscript. Both Shiv Charan Gupta and Brij Mohan asked Om Parkash Jain to get the paper printed. No other person present participated in the talk. He returned from the meeting at about 10-30 p.m. and did not mention about this meeting to respondent No. 2. He however mentioned this to Shri Durga Parshad. The petitioner had asked me to give evidence before the petition was filed and the petitioner had asked me to appear in court on 30th December, 1957.

25. Now on the perusal and close scrutiny of these depositions, it is significant to note that so far the place of meeting, the time and the names of the persons on the side of respondent No. 1 are concerned, the statements made by the witnesses in the examination-in-chief are consistent but in the cross-examination, which cannot be anticipated, the divergence in the testimony of the witnesses and the anomalies giving rise to that are so glaring that it is difficult to reconcile. Firstly, Mr Vidya Rattan PW 36 states that Shiv Charan Gupta told Om Parkash Jain to give the manuscript to Brij Mohan who is well up in these matters for the purpose of printing while Dr Ram Saran Dass PW 38 has stated that Shiv Charan Gupta asked Om Parkash Jain to get it printed. Secondly, that the matter was read out loudly and commented upon by Shiv Charan Gupta appears to be highly improbable. Thirdly, all the three witnesses admit that they are members of Hari Mandir Bal Pathshala and the petitioner Shri Ram Phal had helped them for raising subscriptions for the pathshala. Fourthly, the circumstances in which they are asked to appear in court as revealed from their statements are of dubious nature and also reflect on the veracity of their depositions. Fifthly, no question was put to Durga Parshad (PW 2) referred to in the statement of these witnesses when he was examined on this point in October, 1957. This is also indicative of the fact that the story was not conceived at earlier stage and was engineered with a purpose at a later stage of the evidence. Sixthly, the names of these witnesses PWs 36, 37 & 38 were not mentioned in the list of witnesses filed in the first instance on 20th September 1957 and they were added in the revised list of 11th October 1957. Seventhly, Shri Gulzari Lal Chopra at whose place meeting was held emphatically asserted that Shri Vidya Rattan, Des Raj Bhatia and Dr Ram Saran Dass were not present at the meeting. For all these reasons, it would be nothing short of stultifying oneself to believe or accept the story which for all intents and purposes was got up in order to connect Shiv Charan Gupta, the election agent, with the publication of posters.

* P 1 and P 2, if not the respondent No. 1 himself

26. Sub-issue No. (iii).

"Whether the talk at the time of the search between the S.I. and Joti Pershad or Des Raj, Proprietors Gupta Printing Works has any basis and is proved on the record."

This is by itself provides another fact of the petitioner's version in connection with the poster Ex. P. 1 and P. 2. This talk also does not find any place in the allegations made either in the first instance in para 8 to 15 or in the amended application by the addition of para 15A. This aspect of the issue has also been introduced at a later stage when P.W. 34 Vidya Sagar was examined in December, 1957 and is again to be scrutinised as done in the case of sub-issue (ii) with the statement of Tirath Ram, Sub-Inspector (P.W. 4) who was examined like Durga Pershad (P.W. 2) referred to in sub-issue No. (ii) in October, 1957. The talk is alleged to have taken place on the enquiry of S.I. Tirath Ram from Joti Pershad at the time of search which took place on 1st April, 1957, in pursuance of a complaint filed in the court of Shri R. L. Sharma, by Shri Shyama Charan Gupta, respondent No. 2. The deposition of Tirath Ram (P.W. 4) is conspicuously silent about this talk. No question was put as to whether he had at all questioned the proprietors as to who had delivered the manuscript in the press for printing. But in December, 1957, two months after Shri Vidya Sagar one of the attesting witnesses on Ex. P. 5, the recovery memo, deposed that there was a talk between the S.I. and Joti Pershad wherein Mr. Joti Pershad told the S.I. that the manuscript was delivered by Om Parkash Jain and Brij Mohan. The operative part of the statement of this witness on this point is reproduced as below:—

"The search was carried out in my presence. Kidar Nath Sahni another attesting witness was also there. The documents mentioned in the memo were recovered and taken into possession.

* * * * *

The recovered papers were produced by Joti Pershad. Des Raj had traced them. At the time of bringing the paper, Des Raj had said about the original manuscript that Brij Mohan and Om Parkash Jain congress wallas had delivered them to us and we printed the posters."

In cross-examination, this witness has stated that Sehdev Malhotra is his brother who was elected on Jan Sangh ticket and has been a member of D.M.C. Delhi since 1951. That his brother was twice elected on Jan Sangh ticket. Of course, he was not associated with Jan Sangh. The witness has further stated in cross-examination that Sehdev Malhotra is the sole proprietor of Upkari Cycle Works of which he is a manager employee. That he had gone to the press on seeing a crowd and he was neither a member of the search party nor he was specially called to be a witness. That the party had already entered the press and the table to meet customers lay near the gate and they were sitting there. That about 10/15 persons collected outside the press. That Des Raj had said about the manuscript in the presence of many people including those who attested the recovery memo and the police officers. The S.I. had also heard it. That Joti Pershad simply repeated what Des Raj had said about the manuscript and Des Raj had himself volunteered information about the manuscript. That he did not have any previous occasion to witness a search. The other witness Kidar Nath Sahni (P.W. 40) on this point states as below:—

"The recovery memo Ex. P. 5 was prepared at the premises of Gupta Printing Press. Other persons also affixed the signatures on it in my presence. L. Joti Pershad and Des Raj were present at the press. Mr. Des Raj produced the manuscript Ex. P. 9 before the police Officer. In answer to an enquiry by the police officer, Mr. Des Raj told him that the manuscript had been delivered to the press by Mr. Brij Mohan, General Secretary and Om Parkash Jain for printing, and that usually Brij Mohan delivered to the press subject matters for printing."

In cross-examination, the witness has stated that he shifted from Jullundur to Delhi in 1954 and was a member of Jan Sangh at Jullundur since its inception in July 1951. That the press was not searched. It is incorrect that Joti Pershad brought out only the relevant papers mentioned in the warrant. It was only after the manuscript relevant to the purpose had been found out from the bundle of papers that the police officer asked L. Joti Pershad as to who had given these papers to the press. That Mr. Vidya Sagar was also standing near the gate along with others and he cannot say if he heard the talk which took place between the police officer and the proprietors. That the talk took place while they were near another table lying within a distance of about 10 feet from the gate. That Vidya Sagar was not called and he saw him among persons present outside the gate. He asked him to attest this memo.

Now it will be seen from the deposition of these witnesses that the two statements run contrary. Mr. Vidya Sagar says that it was Des Raj who of his own accord gave the information while Kidar Nath states that it was given on the enquiry of the S.I. Tirath Ram. According to the deposition of Mr. Kidar Nath who was the election agent of Shri Shyama Charan Gupta, respondent No. 2 and General Secretary of Delhi Pradesh Bhartiya Jan Sangh, Vidya Sagar P.W. 34 was not called and he was present outside the gate and was asked to attest the memo. Vidya Sagar admits that he is the brother of Sehdev Malhotra who is in the Jan Sangh party and was returned as member of the Municipality on Jan Sangh ticket and appears to have been introduced as a convenient witness. Besides these two witnesses, the petitioner examined as P.W. 51 and respondent No. 2, Shri Shyama Charan Gupta examined as P.W. 52 have also deposed about this talk in question. The petitioner Shri Ram Phal (on page 1049) deposing on this part has stated as below:—

"During the production of the posters and the bill books, S.I. Tirath Ram asked Shri Des Raj who had got the posters printed. He replied that he had printed them at the instance of Shri Brij Mohan, General Secretary, D.P.C.C. and Shri Om Parkash Jain of Saddar Bazar who gave the manuscript to him and who generally asked the press for the printing of such posters on behalf of the congress. In answer to an enquiry of Mr. Kidar Nath Sahni that the posters were defamatory in character, L. Joti Pershad informed him that he had pointed it out to Mr. Brij Mohan who had brought the poster and manuscript and he had taken full responsibility for the consequences even in respect of owning it in a court, if necessary. He also showed the bill book in which a bill for the posters in the name of D.P.C.C. had been made out by the press. L. Joti Pershad further stated that the manuscript P. 9 was in the handwriting of Brij Mohan himself".

Shri Shyama Charan Gupta, respondent No. 2, who also deposed about this talk has stated as below:—

"I instituted a criminal complaint u/s 500 I.P.C. in the court of Shri R. L. Sharma, Magistrate, 1st Class, Delhi, in respect of the defamatory allegations made in the posters Ex. P. 1 and P. 2 against Shri Joti Pershad of Gupta Printing Works and one Om Parkash Sharma on 1st April, 1957. I applied for the issue of a search warrant for the relevant documents reported to be in possession of the press. It was obtained on the same day and S.I. Tirath Ram was entrusted with its execution by Kotwal, P.S. Fountain, S.I. Tirath Ram accompanied by two police officials, Mr. Ram Phal petitioner and myself left the P.S. at 12 noon to go to the press.

* * * * *

During the proceedings, a talk between S.I. Tirath Ram and L. Joti Pershad took place. The S.I. asked him as to how he had printed the posters and he replied that Shri Brij Mohan, General Secretary of the congress and Mr. Om Parkash had gone to him and instructed him to print and he complied. I also explained to Joti Pershad that he had known me for long and the contents of the posters were defamatory and what made him to print them. He replied that Brij Mohan had taken full responsibility that the manuscript was in his handwriting with which he was acquainted. Mr. Des Raj showed the bill book to me by way of further assurance saying that it was made in the name of the D.P.C.C. The carbon copy of the bill in the bill book shown to me is P. 11. I also took a poster Ex. P. 3 though it was not mentioned in the search warrant with the consent of Joti Pershad."

'This witness in cross-examination has stated that none of them were searched before they entered the press. That the A.S.I. looked at the posters as they were turning and he did not handle the files and the manuscript or the posters at any stage. That he did not ask the A.S.I. to record the talk he had with L. Joti Pershad. That he was present when the statement of A.S.I. was recorded in the present proceedings. He did not cross-examine him on this point. That he got a photostat copy prepared of the memo with other documents and had read the recovery memo in the court of Shri R. L. Sharma after the A.S.I. had filed it. That he had read the draft of the petition after it had been filed in court. That the petitioner had consulted him when he was called upon to amend the petition but he did not read the final draft of the amended petition. That he did not talk about the desirability of the talk which took place between the S.I. and Joti

Pershad at the time of the recovery in the petition or the amended petition. It was however decided that the recovery proceedings including the talk should be brought on the record. Mr. Shyama Charan Gupta in his cross-examination further proceeded which may be quoted in his own words:—

"It was however decided that the recovery proceedings including the talk should be brought on the record. I told the petitioner that it must be brought on the record. I have no idea as to when we agreed upon this course whether before or after the evidence began to be recorded. I cannot say if the talk at which this decision was taken took place before or after the evidence of S.I. was recorded or that it was taken before or after L. Joti Pershad was summoned. We did not hold any consultation about producing L. Joti Pershad. I did not go to any witness or L. Joti Pershad during the present proceedings. I am taking interest in the prosecution of the petition."

27. Now even a casual glance at the statements of the petitioner and Shri Shyama Charan Gupta, respondent No. 2, indicates that the introduction of this talk into the evidence on the asking of respondent No. 2 at a late stage, was an aftermath of consultation as how to connect Brij Mohan with Ex. P. 9. Shri Shyama Charan Gupta admits in his deposition that he cannot say as to whether this was decided after Tirath Ram was examined or Joti Pershad was summoned. The other glaring discrepancy in the statement of these two witnesses Nos. 51 and 52 and that of Kidar Nath Sahnai, the election agent P.W. 40, is that according to the statement of Kidar Nath, it was Des Raj who gave this information but according to the statement of these two witnesses, it was L. Joti Pershad from whom enquiry was made by the S. I. The petitioner and respondent No. 2 moreover have gone further and have stated of Joti Pershad having told them manuscript P. 9 was in the handwriting of Brij Mohan. This information by itself appears to be highly improbable and altogether unintelligible for the simple reason that an enquiry about the delivery of manuscript may be understandable but to ask Joti Pershad for information as to who had written it normally does not stand to reason. At any rate, Des Raj Gupta, one of the proprietors of Gupta Printing Works who was not summoned by either side and was examined as a court witness and as such can be safely presumed as a disinterested witness, has emphatically denied any enquiry having been made by the S. I. or any talk having taken place between the proprietors and the S. I. The operative part of his statement at page 1711 of the file may well be reproduced as follows:—

"The S. I. told us that there was a search warrant for the search of some posters. I brought out a bundle and placed it on the table. The bundle was checked out by Shyama Charan Gupta and S. I. and they brought out the manuscript P. 9. This was the manuscript which was taken out of the bundle. This was taken by the S. I. into possession. There was no talk between the S.I. and my brother about the manuscript. It is incorrect that there was any talk about the manuscript P. 9 that it was in the hand of Brij Mohan or Shyama Charan Gupta, respondent No. 2 told him that why Gupta Printing Works had printed this matter against him, and my brother or myself had replied that as Shri Brij Mohan took the responsibility so we got it printed. I again say, there was no such talk. I have known Shri Shyama Charan Gupta. I had seen him that day and had taken no work from him. This is not correct that besides the aforesaid reference to Shri Shyama Charan Gupta, any talk about the manuscript took place even before others."

Taking all these factors into consideration coupled with the belated introduction of this talk which was not put into question to Shri Tirath Ram S. I. examined earlier and the position disclosed by Shri Shyama Charan Gupta in the statement as to how and when it was thought necessary to bring in this evidence, it seems clear to me that this part of evidence was an after-thought and has been designedly introduced in order to connect Brij Mohan with the publication of the posters P. 1 and P. 2. The other ground for this appears to be that on the production of the bill No. 635 which was found in the name of DPCC, the idea might have been conceived to establish some connection with the General Secretary in charge of DPCC, Delhi and Bal Patshala people viz., PWs 36, 37 and 38 placed their services at the disposal of the petitioner to meet the needful. At any rate, this sub-issue is not proved by any cogent and satisfactory evidence and is replied accordingly.

28. Sub-issue No. (IV).

"Whether P. 9 is proved to be in the handwriting of Brij Mohan by the evidence adduced in support of it and the circumstances relating to that."

This allegation relating to Ex. P. 9 having been in the handwriting of Brij Mohan was also not mentioned in the petition initially or even after the amendment by the addition of para 15A. This is correct that Brij Mohan's name along with other office bearers of DPCC as well as Proprietors of Gupta Printing Works was mentioned in para 15A but it was nowhere specifically stated that Ex. P. 9 was in the handwriting of Brij Mohan. In the course of the evidence, Brij Mohan was summoned on behalf of the petitioner in the first instance but for one reason or the other was dropped. Shri Ram Phal arguing on this point contended that it was Brij Mohan who had written the manuscript P. 9 and that his name has been specifically mentioned in para 15A of the petition. It was stressed that an application was made to call upon Brij Mohan to give his specimen handwriting and he was served but Brij Mohan did not attend, on the plea of illness and a medical certificate was sent. He was resummoned but he was reported to have been out and not available. In these circumstances, he was dropped. The counsel submitted that the circumstances under which he was not examined by the petitioner may be looked into coupled with the circumstance that Brij Mohan failed to give his own handwriting when he was examined as DW on behalf of respondent No. 1. It was argued that the next course left to the petitioner in order to prove the handwriting in question was by other evidence and in this connection, D.W. 12 Ram Chander Goel and P.W. 33 Suraj Bhan were examined. Shri Ram Chander Goel stated that he was the class fellow of Brij Mohan and could identify his handwriting. Dr. Suraj Bhan (P. W. 33) who (also produced two letters sent to him by Brij Mohan written on Praja Weekly form) also averred that he could identify his handwriting. Both the witnesses deposed that Ex. P. 9 was in the handwriting of Brij Mohan, and that after the issue of notice u/s. 99 to Shri Brij Mohan, it was for him to rebut the evidence adduced against him and to give his handwriting which he again did not do and contented to examine two witnesses who did not produce any document of his hand. It was stressed by the learned counsel that in case Brij Mohan had been frank and truthful he could have offered his handwriting himself for comparison by the court even if expert opinion may not have been sought but he did not do that. Reliance was also placed on another document Ex. 'X' which is on a form of DPCC and it was argued that this letter purports to have been sent by Brij Mohan but he has also denied that the same was in his hand. Shri Ram Phal also drew the attention of the Tribunal to the original manuscript and while reading it pointed out the various words and lines having been scored off and substituted by other words. It was maintained that the signature and the address of Om Parkash Sharma encircled in red in Ex. P. 9 is also in the hand of the same person who had written the above writing. Specific reference was made to the word 'congress' and 'Brahm Parkash' substituted by other words.

29. On the other hand, Shri Chawla learned counsel for respondent No. 1 dilating upon this point in reply argued that when this fact was made known on 1st April 1957, at the time of search to the petition as well as respondent No. 2, viz., that Brij Mohan was the scribe this must have mentioned at the time of filing of petition in April, 1957 or even at the time of the amendment of the particulars in July, 1957. In the absence of any such reference in the petition, the counsel urged that the evidence of any one of the witnesses on this point has no evidential value. The learned counsel argued upon this point at some length and submitted that there was intervening period in between 7th March, 1957 when the result was announced and 1st April, 1957, when the search for the manuscript was conducted by the S. I. at the premises of Gupta Printing Works, and the petitioner and his associates were at pains creating false evidence which can be safely inferred from the statements of the witnesses examined in this connection. Mr. Chawla laid great stress on the statement of Tirath Ram S. I. (PW 4) wherein he has stated that when the warrants were shown to Joti Pershad, he produced 2 posters, one manuscript and a bill book. It was urged that this part of the statement shows that every thing was already prepared and it was handed over to the S. I. when he came. The counsel pleaded that the innovation of the talk referred to in the statement of Vidya Sagar (P. W. 34) and others examined in December, 1957, was not at all put off Tirath Ram who was examined earlier in October. The argument precisely was that Joti Pershad was agreeable to Shyama Charan Gupta and that Ex. P. 9, fabricated document was showed in by Shyama Charan Gupta and produced by Joti Pershad when the search warrant was shown by the S. I. to him. Replying to the arguments

of the petitioner that Brij Mohan had failed to give his specimen handwriting, Mr. Chawla contended that an application was made by the petitioner on 20th September, 1957, for summoning Brij Mohan. But on 14th October, 1957, he made another application to summon some witnesses as court witnesses and this list included the name of Brij Mohan. The application of 14th October, 1957, for calling a large number of witnesses including Brij Mohan was however rejected by the then Member of the Tribunal and the petitioner again on 1st November, 1957, filed a revised list of witnesses in which Brij Mohan was not mentioned. It was urged that this procedure shows that the petitioner was not serious and it was only just to show that Brij Mohan was summoned once and then left out. The petitioner accordingly resorted to another method of proving the signatures as laid down in the Evidence Act summoning Shri Goyal P.W. 12 and procuring Dr. Suraj Bhan P. W. 33 of his own accord and as such he cannot take advantage of the circumstance that Brij Mohan who had fallen ill avoided to appear. Mr. Chawla proceeded that the witnesses examined to prove the handwriting of Brij Mohan, namely Ram Chander Goel and Dr. Suraj Bhan, are both unworthy of trust; as borne out by their depositions. The counsel argued that Shri Ram Chander Goel has given his age to be 25 at the time of his deposition in court and in cross-examination at page 908 of the file has stated that he was the class fellow of Brij Mohan in the 8th or 9th class, but had little occasion to meet him after school days. Mr. Chawla contended that it was absurd to suggest on the side of the petitioner that Ram Chander Goel could possibly identify the handwriting of Brij Mohan on the strength of having seen Brij Mohan writing ten years back in a school. It was urged that even the expert opinion is not conclusive and how this witness Ram Chander Goel can possibly say anything about the handwriting of Brij Mohan when he was a boy. The counsel concluded that this evidence has no evidential value and the witness has purjured himself outright. Dilating upon the deposition of Suraj Bhan (PW 33), Mr. Chawla submitted that this witness was not mentioned in the list of witnesses filed by the petitioner, and was brought in haphazardly in the middle of evidence. Further more Ex. P.W. 33/A and Ex P.W. 33/B do not contain any matter to be preserved in the normal course because these document did not involve any liability or could serve any purpose. The witness Suraj Bhan is moreover inimical to Brij Mohan because he has not been able to realize his decretal amount from Brij Mohan. The learned counsel contended that the identification of the handwriting of Brij Mohan by Suraj Bhan is again belied by the further statement wherein Suraj Bhan has also stated that document No. 22, a manuscript of some other poster, is also in the handwriting of Brij Mohan, whereas No. 22 is a document bearing the seal of DPCC and a manuscript proved to have been written by R. S. Yadav, Office Secretary. Similarly, Dr. Suraj Bhan has failed to identify the handwriting at No. 21, 24 manuscripts of the posters produced by Des Raj which have been proved by persons—who wrote them and in these circumstances, it would be too much to give him the credit of identifying Ex. P. 9. The counsel concluded that these documents Ex. P. W. 33/A and B alleged to be in the hand of Brij Mohan are not genuine and this evidence has been fabricated with the collusion of Dr. Suraj Bhan by the petitioner and respondent No. 2, Shyama Charan Gupta. The argument was reinforced that the petitioner and his associates were in possession of the photostat copies of Ex. P. 9 and this evidence must have been manufactured. Adverting to Ex. 'X' another document relied upon by the petitioner, Mr. Chawla argued that this document is dated 16th June, 1957; but this was not put to Brij Mohan at the time of his deposition on 23rd July, 1958 and was brought on the record subsequently without disclosing as to how and wherefrom this was obtained by the petitioner or respondent No. 2. It was urged that this too was an after-thought and this document may have been manufactured like Ex. P.W. 33/A and P.W. 33/B by the same person. It was next argued that this letter Ex. 'X' was a letter addressed to Smt. Sucheta Kriplani styled as *didid* and it is not understandable as to how it was preserved by her and as to how and why she gave it to the petitioner for bringing it on the record. The learned counsel replying to the assertion of the petitioner and his witnesses that Joti Pershad had at the time of search stated that P. 9 was in the handwriting of Brij Mohan, submitted that Joti Pershad as borne out by the record was summoned by the petitioner but was left out because he was not prepared to state the story which was subsequently stated by Vidya Sagar (P.W. 34), Kidar Nath (P.W. 40) and petitioner (P.W. 51) and Shyama Charan Gupta (P.W. 52). Regarding the analytical study of the documents Ex. P. W. 33/A and B with Ex. P. 9 the manuscript in question, Mr. Chawla submitted that under the provisions of Sec. 73 of the Evidence Act, such comparison cannot be made in the eyes of law. It was argued that the word used in Sec. 73 is 'purport' which indicates that the writing which is to be compared must purport to have been written by the man and the writing must show it as such. The argument exactly is that the writing Ex. P. 9 purports

to be in the hand of Om Parkash Sharma and does not show that it is in the hand of Brij Mohan and as such Sec. 73 is not applicable. Mr. Chawla also referred to the other part of Sec. 73(2) of the Evidence Act and submitted that in part (2) power is given no doubt to the court to take the signatures and handwriting of the person of his own accord but when Brij Mohan has been left out by the petitioner himself and the respondent examined him in defence, the handwriting of Brij Mohan could not be sent to any expert at the expense of the respondent. The court also could not do so of his own accord because the parties did not avail of it. Mr. Chawla contended that in these circumstances, the alleged grievance of the petitioner that Brij Mohan failed to offer his handwriting when he was served with a notice u/s. 99 of the Act in rebuttal was of no consequence. In this connection, Mr. Chawla next argued that the notice u/s. 99 of the Act did not raise any presumption against Brij Mohan because it is more or less a notice on the analogy of Sec. 204 of the Criminal Procedure Code and it does not mean that there was any *prima facie* case against him which he had to rebut. The counsel urged that no duty was cast on Brij Mohan to rebut or to give handwriting in defence of his own accord. In these circumstances, the counsel concluded that there was no proof on the record that the handwriting Ex. P. 9 is in the hand of Brij Mohan because it cannot be compared u/s. 73 of the Evidence Act and the evidence adduced for the purpose of comparison namely of P. W. 12 and P. W. 33 is of no avail. Lastly, it was urged that even if the court could compare it in the light of para (2) of Sec. 73 of the Evidence Act, it would not improve the position because this type of evidence is most dangerous and unsatisfactory and the court cannot play the role of an expert. The learned counsel emphasised that even if any handwriting had been taken after the defence evidence for the purpose of comparison by an expert, there would have been no limit because that evidence was again to be rebutted by the respondent which procedure was not permissible in the eye of law. Reliance was placed on a decision of Privy Council reported in 1928 P.C. 227 at page 281 and 1941 Lahore, 401, at page 413 (AIR).

30. Now on the appreciation of the arguments of both sides which have been reproduced above *in extenso*, the question indeed appears to be an involved one. But in view of the fact that the whole argument of both side has been made a part of the judgement, I do not propose to discuss the same in all its details and taking broad view, I am of the considered opinion that the version put by Mr. Chawla, learned counsel for respondent as to the planting of P. 9 with the assistance of Joti Pershad by the petitioner and Shyama Charan Gupta in order to get it recovered at the time of search does not prevail. It is hard to believe that Joti Pershad who was prosecuted u/s. 500 IPC could have been a party to the planting earlier of Ex. P. 9 in order to get it recovered on search from his premises. Secondly it does not stand to reason that Joti Pershad and Des Raj Gupta proprietors of the Gupta Printing Works who were receiving large number of orders from the congress and are said to be congressmen, should have chosen to implicate Brij Mohan who happened to be the General Secretary of DPCC at that time. These circumstances speak by themselves and I am not prepared to accept the argument of Mr. Chawla that P. 9 was planted with the collusion and the complicity of Joti Pershad or Des Raj. Regarding P. W. 33/A and P. W. 33/B produced by Suraj Bhan, it is again problematic whether the petitioner and respondent No. 2 could have manufactured these documents with the assistance of Suraj Bhan P. W. 33 in order to create evidence for the purpose of comparison of P. 9 and conceived a subject matter of a cheque which was not to be cashed. At the same time it also presents difficulty to believe that a cheque mentioned in P. W. 33/A and B was issued by Dr. Suraj Bhan in 1950 which was not to be cashed and still the two letters have been preserved for the last 8 years. The subject matter also is not normal namely that Brij Mohan had no account in any bank and wanted a cheque for somebody and in order to meet that demand got a cheque on the understanding that he would deposit the amount of Rs. 400 himself. He actually did not deposit the money nor got the cheque cashed and the two letters alleged to have been written by him on two different occasions are still preserved by Dr. Suraj Bhan, although the transaction did not take any tangible form. It has therefore, been somewhat difficult to adjudge as to whether these documents have now been fabricated in order to avail the evidence of Suraj Bhan for the purpose of comparison of P. 9 or have been preserved by Dr. Suraj Bhan for the last 10 years. One circumstance of course is significant that Dr. Suraj Bhan was not mentioned in the list of witnesses and was produced abruptly at a later stage when 38 witnesses had already been examined. Secondly, Ex. P. 9, the manuscript reads equally good with or without substituted words and this shows a purpose behind it. Thirdly, why Brij Mohan should write first mentioning respondent No. 1 and then congress and send it to Press in this form. Fourthly, the story of the manuscript shown to Shiv Charan Gupta in the meeting held at the studio of Gulzari Lal Chopra has already been found fictitious and if Ex. P. 9

is that then Brij Mohan cannot be the scribe by any stretch of reasoning. Be that as it may, the impression that this part of evidence has left upon me is that there are serious doubts and grave suspicions about the knowledge of Ex. P. 9 by some one from the congress side and it was with this impression that notices u/s 99 of the Act were issued to Brij Mohan, Om Parkash Sharma, and Om Parkash Jain by the Tribunal at the close of the evidence of both sides. But the petitioner by his own evidence of a plot or conspiracy which he appears to have introduced out of anxiety to connect either respondent No. 1 or his election agent with the publication has belied his own version upon which he relied initially in the petition itself. The very allegation that a certain document was already prepared by Om Parkash Jain and others and was shown for the first time 10/12 days before the polling in the meeting which was held at the place of Gulzari Lal Chopra (according to the respondent of congress workers and according to the petitioner a public one) clinches the sub-issue that document P. 9 was already prepared and written by somebody, i.e. by Om Parkash Jain and his companions. The evidence of P.Ws. 36, 37 & 38 that the manuscript was on 2 pages, was in Hindi and the allegations read out aloud being identical with Ex. P. 1 corroborates that the manuscript was already prepared before it was shown to Shiv Charan Gupta by Om Parkash Jain and recommended for publication by Brij Mohan. Next the stand taken by the petitioner in the petition and in arguments viz. that Brij Mohan was the pioneer or one who conceived to have issued a poster in the fictitious and pseudo name of Om Parkash Sharma on behalf of D.P.C.C. is negatived by the story disclosed by P.Ws. 36, 37 & 38 and relied upon by the petitioner as P.W. 51 and exonerates Brij Mohan from the liability of being the scribe of the manuscript. It is again significant to note that some of the words have been scored off and substituted. The words in the manuscript 'congress' substituted by 'chanao' and 'congress' substituted by 'virodhi' as well as a line 'Shri Brahm Parkash ke bare men' scored off, and substituted by 'durson' betray and reveal a tell tale story, and it appears some one had written this poster bracketing Brahm Parkash but somebody suggested to substitute some other words in order to make it a party contest. In case that Brij Mohan was responsible for this, it could not have happened according to natural conduct and events. Furthermore to say that the substituted words as well as the original are all in one hand, also does not stand to reason and have no meaning. The allegations published in the poster (6 or 7 in number) moreover are all such which presumably and apparently were in the knowledge of those who had been the associates of respondent No. 2, Shyama Charan Gupta, and knew about these matters. It cannot accordingly be the work of Brij Mohan or D.P.C.C. by itself as alleged in the petition treating Om Parkash Sharma a pseudonym and Yuvak Samaj non-existent altogether.

Coming to another controvertial point of note referring the matter for the opinion of an expert, this is correct that the hand-writing of Brij Mohan was not obtained at one stage or the other. Initially, the onus was on the petitioner and he failed as shown in the arguments of respondent No. 1 to examine Brij Mohan as P.W. and by making a request to the court to call him as a court witness which the then member of the Tribunal did not agree. Similarly, at a later stage, an attempt was made when Brij Mohan was examined as a D.W. on behalf of respondent No. 1. This attempt proved futile because the respondent took exception to it and the petitioner did not come forward to incur the expenses of the expert by sending the handwriting on petitioner's behalf when evidence had already closed. So far the Tribunal is concerned, the matter was left till the conclusion of the defence evidence as stated in my order dated 12th August 1958 by virtue of which notices u/s 99 of the Act were issued and it was left to Brij Mohan to rebut the evidence but he too contented to refute it by the same type of evidence namely producing two witnesses who had been working with him as journalists and had occasions to see his handwriting more often than not to depose that P. 9 was not in his handwriting. Of course these gentlemen, Shri Khem Chand Suman (R.W.3) and Shri Mahavir Adhikari (R.W.4) did not produce any documents in the handwriting of Brij Mohan from their possession but I see no reason to disbelieve them that they had occasions to have seen Brij Mohan's handwriting when they were working in the press. It appears that Brij Mohan also contended to rebut the evidence of Ram Chander Goel and Dr. Suraj Bhan by another set of witnesses examined on his behalf, with equanimity. The other question which falls for consideration is that of the applicability of Section 73 of the Evidence Act. The principle involved u/s 73 of the Evidence Act is that the admitted or the proved writing, signature etc. may be compared with the writing, signature etc. which either purports or is alleged to have been written or made by a particular person, Jankin C. J. in Brijdra Kumar, reported in 37, Calcutta, page 467 (I.L.R.) held that this section requires that the disputed writing must purport to have been written by the person to whom it is attributed, i.e. to say that the writing itself must state or indicate that it was written by that

person. According to this interpretation it is not competent to a court under the first paragraph of the section to compare with an admitted or proved writing, another writing which does not purport to have been written by a particular person, but is alleged to be in any person's handwriting. Mr. Chawla relied upon this interpretation and it cannot be said whether this is the only interpretation that can be put and whether the view was adopted by other high courts also than Calcutta. At any rate, the word 'purport' has some significance and this Ex. P. 9 purports to have been written by Om Parkash Sharma who again in his deposition has stated that this Ex. P. 9 is not in his handwriting. In this sense, it does not purport to have been written by any body. There is yet another aspect of the question viz. that Ex. P. 9 was not the document which was shown by Om Parkash Jain to Shiv Charan Gupta in the meeting held at the place of Gulzari Lal Chopra and this document according to the petitioner's version was written by Brij Mohan. Herein, again it looks absurd that Brij Mohan who is credited to be a journalist and well-versed in writing to have written first different words when the conspiracy had already been laid and then scored them off and substituted other words. It follows that the writing in question was written by some one but some words were not approved by another person and were substituted by certain other words. This, as observed above, could only happen when the document was actually written by the dissident members of the Jan Sangh namely Om Parkash Jain and Om Parkash Sharma, Phul Singh Saini and others as borne out from their depositions and subsequently, on the advice of somebody some words were changed and the matter was sent to the press. The whole difficulty that confronts is as to who is the scribe of the manuscript. The petitioner attributed and sought to connect Brij Mohan by the introduction of the evidence of P.Ws. 36, 37 & 38 who are alleged to have attended the meeting at Gulzari Lal Chopra's place. That story has been held to be got-up and fictitious one and as such the petitioner's assertion regarding the handwriting is belied and falsified by his own evidence produced at a later stage. At any rate, it is not proved by any precise and conclusive evidence necessary in the matter of corrupt practice as held by their Lordships of Supreme Court in 1957, S.C., 444, quoted above and sheer suspicions cannot form a substitute for legal proof. This sub-issue also must fail and the same is decided against the petitioner.

31. Sub-Issue No. (V).

"Whether Brij Mohan acted as a canvassing agent and in his capacity as Genl. Secy., D.P.C.C. he is deemed to have acted as agent as defined in explanation appended to Sec. 123 R.P. Act i.e. with the consent of the candidate."

In this respect, in para 15A, Brij Mohan of course was mentioned specifically and in the course of evidence the allegation was sought to be proved by witnesses that he acted as canvassing agent of respondent No. 1. The petitioner took his stand on 3 different allegations. Firstly, that Brij Mohan represented the candidature of Brahm Parkash respondent No. 1 in his capacity as General Secy. Secondly that in the course of election campaign, he made speeches at various places in support of the candidature of respondent No. 1. Thirdly that he canvassed for votes for respondent No. 1. Regarding the first allegation against Brij Mohan that he attended a meeting called by the Chief Electoral Officer and that he sent a letter intimating that respondent No. 1 was standing as a congress candidate from Delhi Saddar constituency. It was sought to argue by the petitioner that this indicates his interest in the candidature of respondent No. 1, Brahm Parkash. Shri Chawla in reply contended that so far the meeting convened by the Chief Electoral Officer and attended by Brij Mohan was concerned, it is borne out from the deposition of Shri Hans Raj, Chief Electoral Officer (P.W. 3) that three meetings were held in this connection. The first was held on 29th December, 1956, the second on 17th November, 1957 and the third on 11th February, 1957. Out of these Brij Mohan attended only first meeting and this was before the nomination papers were filed. In this meeting, the counsel submitted, Brij Mohan represented the congress as a party and gave the names of all the congress nominees in his capacity as General Secretary of D.P.C.C. and as such it is wrong to say that he acted for respondent No. 1. The other two meetings of 17th January, 1957 and 11th February, 1957 were not attended by Brij Mohan vide Ex. P.W. 3/3 and P.W. 3/4, and the allegation is pointless. The next allegation against Brij Mohan was that Brij Mohan attended and addressed some meetings during the days of election. Shri Ram Phal in this connection relied upon the statements of P.Ws. 2, 24, 29 & 42 who deposed that they had seen Brij Mohan having attended and addressed the meeting. Mr. Chawla on behalf of the respondent submitted that the election was between parties i.e. Congress and Jan Sangh and the evidence adduced is to be judged and appreciated in this light. Coming to the witnesses, it was argued that Shri Durga Dass (P.W. 2) is the Secy. of the Jan Sangh Mandal Committee and he worked

for Jan Sangh candidate. He stated that he had been attending election meetings and he attended one meeting held at Lakar Mandi where Brij Mohan also spoke and a purse was presented to him. Mr. Chawla contended that Lakar Mandi in the first place is not in this constituency and secondly it was a public meeting which was attended by all the Congress candidates in a party meeting and attendance in party meeting was no violation of the Act because in the amended Act schedule IV has been deleted and party meetings are not considered the meeting of any one candidate. Mr. Chawla further argued that this witness P.W. 2 in cross-examination admits that he offered himself as a witness on reading the petition. It shows that he was for Jan Sangh and his evidence is of a biased nature. P.W. 24 is Dunesb Kumar who has stated that some one told him that Brij Mohan had addressed the meeting. This evidence is clearly of a hearsay nature and is not admissible. This witness also lives in Jawaharnagar at a distance of 6 miles and is a member of Jan Sangh. Mr. Chawla submitted that the evidence is tainted and prejudiced. P.W. 29 Nand Kishore Seth has stated that he attended one of the meetings in which Brij Mohan had spoken. Mr. Chawla criticising his statement urged that his evidence is also of partisan nature because this witness had at one time gone on a hunger strike to unite the Hindu parties. P.W. 42 Om Parkash s/o Harbans Lal admits that Lachmi Ram is his first cousin who is in the R.S.S. and who attends shakhas and that he works at his shop. The whole argument of Shri Chawla in this connection was that in the first place, the evidence relied upon by the petitioner was of partisan nature and is not believable. Secondly, even if Brij Mohan had attended any meeting those were public meetings. Even if for the sake of argument it may be taken that he attended any public meeting held in the furtherance of the party that does not fall within the mischief of election law. It was argued that in the light of the amendment of 1956 by the deletion of schedule IV as borne out from the remarks of Mr. Pataskar in the debate in Parliament, meetings held on behalf of the party could not be taken to have been held in the interest of respondent No. 1. Reliance was placed on a decision of the Punjab High Court reported in XIV, ELR, 105. Mr. Chawla also referred to the evidence adduced on behalf of respondent and particular reference was made to the evidence of P.Ws. 20, 67, 49 and 72 and several other D.Ws. who belong to various parts of the constituency and have stated that Brij Mohan had never come in their illaqa for canvassing. Reference was also made to the meeting held at Hauz Qazi and addressed by Shri Pant. The counsel submitted that Brij Mohan was not present as deposed by D.Ws. including Smt. Shushila Mohan (D.W. 28), President of the City Congress Committee and the convener of that meeting as well as D.W. 19, Ganpat Rai, an honorary Magistrate and a business-man, Shri Milkhi Ram D.W. 66, a press reporter also states that he did not see Brij Mohan in that meeting. In the alternate, it was submitted that it was also a party meeting addressed by a high dignitary of the position of Home Minister and even if Brij Mohan had gone, it cannot be said that he had canvassed for respondent No. 1, by attending that meeting. On the top of it, the meeting addressed by Shri Pant was in the constituency of Shri Radha Raman and not in Saddar constituency. The counsel concluded that this type of evidence has no evidential value and is pointless. Adverting to the presentation of a purse, Mr. Chawla submitted that that meeting was held at Lakar Mandi, Motia Khan, which is not in Saddar constituency and as borne out by the evidence on the record, the meeting was attended by all the Congress nominees and was a party meeting in which a purse was presented to the General Secretary. Replying to the controversy as to whether Brij Mohan made any speech or only paid thanks, Mr. Chawla submitted that one can say a few words even paying thanks but even if he had said some thing about the achievements of Congress, it was of no consequence. Now the evidence discussed above is manifestly of general nature and tainted one and as such wholly insufficient to establish that Brij Mohan worked and canvassed for respondent No. 1, exclusively as suggested by the petitioner. I hold accordingly.

32. Regarding the second part of the sub-issue as to whether Brij Mohan is deemed to have acted as an agent as defined in explanation to Sec. 123 of the Act on account of the activities referred to above, the argument of the petitioner was on the point of agency. It was argued that the word 'agent' has a wider scope in the election law as compared to one given in the law of contract and declaration and authorisation is not necessary and the agency can be established by circumstances arising out of the general features of each case. The petitioner relied on III, ELR, 198 in the matter of 'T. C. Bissappa vs. Nigappa' and some more decisions reported in Doabias Election cases, Volume I in the matter of 'Abdul Razak vs. Hazi Mohd. Ismail' and Doabias election cases, Volume II in the matter of 'Mohd. Haq Niwaz vs. Malak Khan', page 313, as well as 'Hussain Bhai Abdul Bhai vs. Mohd. Ibrahim Harun Zaffar', page 225, 'Syed Mahmud Shah vs. Ghulam Samad', page 311, 'Lattu Ram vs. Lal Chand', page 242(244). Reliance was also placed on 1955, N.U.C., No. 5800, in the matter of 'Mathai

Mathew vs. K. C. Abraham' corresponding to 1955 A.I.R., page 376. It was argued that when an official of a certain association works on the principles of the association, he will be taken as agent, more especially when the election was fought on party basis. In the above noted cases reported in Doabias Election Cases, Volumes I and II, the observations of the Tribunals are on the fact of 'knowledge' and the activities tending to promote a candidate's election. It was held that if a candidate having knowledge of the activities of a person working for him does not disown them, then he will be construed to have the knowledge of the activities and connivance was proved. Mr. Ram Phal further contended that the word 'agent' has been defined in explanation to Sec. 123 but Sec. 123 is again to be read with Sec. 100 which has two parts (1) and (2). The counsel proceeded that sub-section (2) is to be read with sub-section (1) and the provisions of sub-section (2) come into play when any allegation has been taken on the elements which constitutes sub-section (2) of Sec. 100. The argument precisely was that the respondent has not taken a stand on any of the elements given in clauses (a), (b), (c) and (d) of sub-section (2) of Sec. 100 of the Act and as such he cannot take the advantage of those namely that the corrupt practice was committed contrary to the orders of the candidate or his election agent and election was free from any corrupt practice, and that the candidate took reasonable means for preventing commission of corrupt practices or that corrupt practices were of trivial and limited character etc. The petitioner submitted in this respect that according to the interpretation of statutes, when the conditions are not pleaded, then the advantage contemplated under Sub-sec. (2) cannot be given to the respondent No. 1. On the point of interpretation of statutes reliance was placed on 1957, Andhra, 414; 1957, Bombay, 78; 1957, Punjab Law Report, 454, and it was argued that it is the duty of the judge to construe the statute in such a manner that no part of it was superfluous. It was next argued that according to the principle of interpretation propounded in these rulings, the substance is that the mischief should be avoided and the remedy should be advanced. Shri Ram Phal on the strength of the authority quoted above submitted that in the absence of the conditions enumerated in Sub-Sec. (2) of Sec. 100 of the Act having been urged or raised by the respondent, the onus of consent was upon the respondent. No further argument was made on the point of consent nor any authority was cited that the onus was not on the petitioner to prove the consent in order to constitute agency as contemplated in the explanation appended to Sec. 123 of the Act.

On the other hand, Shri Chawla respondent's counsel arguing on the legal aspect on the point of agency and consent submitted that agency in the old Act was referred to in Sec. 79 of the Act but in 1956 in the amended Act, the definition of agency u/s 79 was deleted and explanation was added to Sec. 123 in the new Act. This change in the amended Act, the counsel argued, has its repercussion on Sec. 100 also inasmuch as in the old Act the word 'agent' was also used but in the new Act u/s 100(1)(b) the word 'agent' has not been used and the word 'connivance' has been substituted by 'consent'. It was urged that the word 'connivance' which has no specific connotation has been replaced by the word 'consent' which is more legal and definite. Furthermore that by the deletion of the word 'knowledge', the position has been made now more strict. It was submitted that connivance is a thing which does not connote consent because consent as defined in Stouts Judicial Dictionary at page 282 is an act of reason accompanied with deliberation, mind weighing as in a balance, the good and evil on each side. Consequently these pre-requisites of the connotation of consent must precede before any consent, implied or express, can be accepted. Learned counsel proceeded that of course 'knowledge' is the first requisite but in consent one cannot stop there if one has the knowledge; and he does not act because it amounts to connivance. With consent one has to go further and agree with the act. In other words, implied consent must be the consent that approves it and for express consent there must be concurrence. Mr. Chawla made reference to the Rajya Sabha debate volume 30, No. 35 dated 25th May, 1956 wherein the speeches of Shri H. N. Kunzru and Shri Pataskar, Law Minister have been reproduced. It was argued that Mr. Pataskar maintained the difference between consent and connivance and stated that 'connivance' was very vague which was substituted by the word 'consent'. Learned counsel concluded that under the present amended law, the consent is to be proved and sheer knowledge or connivance are not sufficient which have been discussed and defined in various decisions under the old Act relied upon by the petitioner in the course of his arguments. Replying to the argument of the petitioner on the point of sub-section (2), Sec. 100, Mr. Chawla submitted that the interpretation put by the petitioner Shri Ram Phal that Sec. 100(1)(b) and sub-section (2) are to be read together and that sub-section (2) shifts the onus to the respondent is manifestly wrong interpretation on the face of it. It was submitted that sub-section (2) of Sec. 100 is a saving clause and the respondent did not invoke the protection of sub-section (2). It was vehemently urged that on the

legal position, it is not sufficient to prove the corrupt practice u/s 123 of the Act but it is to be proved that it was committed within the provisions of Sec. 100(1) (b) of the Act while sub-section (2) of Sec. 100 is only a saving provision which comes into play when Sec. 100(1)(b) of the Act has been proved and applied. The argument exactly was that sub-section (2) of Sec. 100 is another saving for the respondent because even if the corrupt practice is proved under the provisions of Sec. 100(1)(b), still sub-section (2) takes away the penalty if so required but in this case the applicability of sub-section does not arise nor it has been invoked as said above. Coming to the question of consent, Mr. Chawla submitted that there is not an iota of evidence that consent was forthcoming, express or implied, so far respondent No. 1 was concerned. The council proceeded that even if on the basis of evidence about conspiracy alleged to have taken place at the place of Gulzari Lal Chopra as evidenced by PWs 36, 37 and 38, respondent No. 1 was not connected. Regarding the election agent, the story given out is again ridiculous and on the basis of a false story, election agent Shri Shiv Charan Gupta cannot be treated to have given any consent. The argument was reinforced that the word 'agent' has been deleted in the amended section 100 and as such the word 'any person' now used is not to be taken acting as an agent but shall have to be proved definitely and distinctly that it was with the consent of the candidate or his election agent and as such consent has its own significance and has to be proved independently of his being an agent. The learned counsel maintained that agency even if proved does not take us further for satisfying the requirements of Sec. 100(1)(b) until consent has not been proved. Reliance was placed on a decision (*Vishvanath vs. Hira Lal Dass*) reported in, 1958 Assam, 97, VII, ELR, 100 in the matter of '*K. B. Rao vs. S. S. More*', VIII, ELR, 417 in the matter of '*Nihal Chand Devi Chand vs. Election Tribunal Bombay*', IX, ELR, 451; X, ELR, 376; 1958 Madras, 240; Halesbury Law of England Part III 'Politics' at page 304 etc.

33. Now on the appreciation of the arguments of both sides on this legal aspect of the question, it may be said at once that as I read Sec. 100 of R.P. Act, it seems clear to me that sub-section (2) of Sec. 100 is a saving clause as envisaged in the opening words itself and comes into play even if and when any corrupt practice is proved u/s 100(1)(b) of the Act. Judged in this view, the major part of the argument advanced by the petitioner, Shri Ram Phal collapses to scrutiny inasmuch as the effort made on the basis of authority regarding the interpretation of statute cited and referred to above is of no avail. The rulings in relation to interpretation of statute, are correct but the application of these by the petitioner is fallacious and does not hold water. The sub-section (2) has clearly been provided as a rider and does not form a part of sub-section (1) and the two sub-sections (1) and (2) stand apart u/s 100 of the Act. The sole question for determination accordingly is as to the meaning of 'agent' as defined now in the amended Act in the explanation appended to Sec. 123 of the Act. The other feature which I might take it at the very outset is that with the deletion of the word 'knowledge' and the word 'connivance' most of the old Act substituted by the word 'consent' most of the decisions given under the old Act are no longer good law. I am conscious that certain principles enunciated or certain observations made therein can be used as good arguments but the authority by itself after the amendment of 1956 in the Act cannot be accepted as good authority and as such the decisions relied upon by the petitioner from Doabia's Election cases cannot be helpful. The latest authority on the point is one of Assam High Court in the matter of '*Viswanath Upadhaya vs. Hira Lal Dass and others*' page 97. This case has already been considered by me in petition No 117/57 (*Shri Amir Chand vs. Smt. Sucheta Kripalani*) as published in the Government gazette. The same case has now been reported in All India Reporter under the citation given above and is the latest authority as compared with the decisions of the various Tribunals. The dictum laid down by their Lordships of the High Court, Assam, is to the effect:—

(f) "In order to constitute the agency under Sec. 123, it is essential that a person must be proved to have acted as an agent in connection with the election with the consent of the candidate. Reading S. 100 and S. 123 together, it will appear that if a person acts in connection with election as an agent with the consent of the candidate, he will be deemed to be an agent for the purposes of S. 123. The result will be that any publication done by such a person will constitute a corrupt practice. But before the petitioner could get any relief under Sec. 100, he is not only to prove that a corrupt practice has been committed by any person; but it has been done with the consent of the returned candidate."

(g) "It is true that consent is to be inferred from the circumstances and it may be direct or indirect. But consent is a question of fact which

will have to be established by the petitioner before he gets a relief under Sec. 100. If it can be established from the circumstances that the candidate had knowledge of the fact that an article was going to be published in a newspaper and that the article contained certain imputations against the personal conduct of another candidate and if he did not take any steps to stop publication, his consent to the publication may be inferred. But from the fact that he had knowledge of the contents subsequent to its publication, no duty is cast on him to go and publish some repudiation of the allegations contained in the publication. The consent, so as to make the act of third party as the act of the candidate should be in respect of the act of the third party; the knowledge which have legitimately fled to the inference of consent would be the knowledge of the fact that it was going to be published. Any subsequent knowledge of the contents of the publication cannot be relevant for the purpose of determining the consent of the candidate prior to the publication'.

- (h) 'In order to fasten the liability to the editor's act on a candidate, it is necessary to establish that the editor was acting as an agent of the candidate in connection with the election and that too with his consent. Mere action of the editor beneficial to the candidate will not be enough to prove that he was acting as an agent in connection with the candidate's election. Even if it is proved that he was acting as an agent, it is further to be proved that he was doing so with his consent.'

Mr. Ram Phal in the course of reply to the argument of the respondent pointed out that the facts are distinguishable. But facts are not being considered and the abstract question of law and the principles enunciated are to be considered at present as to what change has taken place in the amended Act by the substitution of the word 'consent' in place of 'connivance'. This issue on the point of legal aspect was also argued by Shri U. M. Trivedi Senior counsel on behalf of Shri Shyama Charan Gupta, respondent No. 2; Mr. Trivedi on the point of agency and consent, submitted that there was not much difference between connivance and consent and it can be inferred from the circumstances. Reliance was made on a decision of Election Tribunal, Poona in the matter of 'Krishnaji Bhimrao vs. Shanker Shanta Ram' reported in VII, ELR, 100. This case was also under the old Act and the learned Tribunal observed that even though the term 'agent' has a much wider significance in the election law, yet in the law of agency the Secy. of the election propaganda of a party who published leaflets and posters in his capacity as such Secretary cannot be deemed to have done such acts as an agent of the candidate by the party unless there is evidence to show that the Act was done with the consent, and connivance of the candidate. Mr. Chawla on the other hand placed his reliance on this decision and maintained that the dictum laid down rather goes in his favour. In the face of the latest authority of the Assam High Court, I think it is not necessary to elaborate the point further. I am however conscious that in that case, an editor of a paper was alleged to have acted as an agent who was not a member of the Congress but in the present case, Shri Brij Mohan is not only a member but was acting as General Secretary of DPCC and as such the previous case on merits is not a parallel case. But at present I am more concerned with the legal aspect as to what part the change in the amended Act has now played in the determination of the question as to whether consent is a stronger word than connivance or not. Consent to my mind connotes deliberate concurrence. I feel inclined to agree with the distinction made out by Mr. Chawla in the course of his argument.

I am also aware that the law of agency is an important part of the election law and in common parlance an agent is a person employed to act for another or to represent another in dealing with third person. This is in fact the definition of an agent under the contract Act. In the election law, the parliamentary practice however has been that a corrupt practice committed by a candidate personally or which he did through another he was to lose when he was guilty of corrupt practice committed by his agent. The reason naturally is that if agents are permitted to play foul and the candidate should reap the benefit of their foul play without being responsible, it would cause great mischief. But this was the view of the English Election law to a great extent. In this context in the election law, the doctrine of agency was carried further than the contract Act. The English decisions, however, vary in certain respects so much so that in some cases under English law a candidate may be responsible even for the acts done by his agents in defiance of his instructions. This was subsequently taken a very stringent and harsh law to make a man responsible who has directly forbidden a thing

to be done by a subordinate agent. In the Indian Election law, this view of the election law has not been adopted. Under the R.P. Act of 1951, extension of the scope of agency was adopted for which reference may be made to the case of *T. C. Bissapa vs. Nigappa*, a decision on which reliance was placed by the petitioner also. In this case the Tribunal observed:—

“The term agent in election law has a wide significance. No authorisation or declaration in writing is necessary and the Tribunal has full power to hold any person as an agent of the particular candidate after considering the facts and circumstances. The fact of agency may be established by circumstances arising out of the general features of the case, the conduct and connection of the party, the subsequent recognition of the acts of the supposed agent or at least an absence of disavowal of such acts.”

This decision in the case of *T. C. Bissapa vs. Nigappa* was referred and relied upon by the Election Tribunal in the case of *Viswanath Upadhaya vs. Hira Lal* from Patherkandi constituency of the Assam Legislative Assembly. But their Lordships of the High Court in appeal reversed the order of the Tribunal and distinguished this decision under the old Act. Similar is the position of other cases which were decided under the old Act. The present position under the R.P. Act with the definition of ‘agent’ deleted from Sec. 79 and added in explanation appended to Sec. 123, appears to be that under the present law, it is necessary that there should be consent as distinguished from mere knowledge for any one acting as an agent before he can be treated as the agent of the candidate for the purposes of corrupt practices. It follows that when a person commits a corrupt practice, the returned candidate will be affected by it adversely only when that person had done so with the consent as distinguished from mere connivance of the returned candidate or his election agent, and the consent also can be only of the election agent and not of any other agent i.e. polling agent or a person acting as agent with the consent of the returned candidate or his election agent. It is thus well recognised that the scope of the doctrine of agency under the election law as hitherto recognised has been modified by the present amendment and the scope of agency narrowed down.

34. Applying this principle to the facts of this case, it is to be seen as to whether Brij Mohan acted as an agent of Shri Brahm Parkash respondent No. 1. This is correct that he was working as General Secretary of the D.P.C.C. and in that capacity he attended the first meeting of all the parties convened by the Chief Electoral Officer when the names of the congress nominees were to be given. This is also correct and admitted that Shri Brij Mohan had attended a public meeting at Lakar Mandi, Motla Khan where all the congress candidates were present and a purse was presented to him and he also spoke in the meeting according to him for paying thanks and according to the published reports furthermore on the achievements of the congress. The evidence on other points that he attended meetings on behalf of respondent No. 1 or canvassed votes as discussed above do not carry conviction as the evidence is much too meagre and cannot be called cogent and satisfactory evidence, as said above. His participation at the place of Gulzar Lal Chopra where a manuscript is alleged to have been shown to Shri Shiv Charan Gupta and who suggested the publication by Brij Mohan has already been held an unfounded story and an improvement under sub-issue No. (ii). There is no other evidence on the record to prove consent and the mere circumstance that he happened to be the General Secretary and respondent No. 1 was the Vice President by no stretch of reasoning can by itself form the basis of holding him an agent of respondent No. 1, in view of the principles enunciated above. This aspect however is to be considered on the point of political associations as well. The basic legal principle in this connection has been aptly laid down in the *Halesbury's Laws of England*, III edition, volume 14, page 172, in para 305 under the heading ‘political associations as agents’. It reads as follows:

“It has been recognised that there may be a political association existing for the purpose of a political party advocating the cause of a particular candidate and largely contributing to his success, yet in no privity with the candidate or his agents, and an independent agency and acting on its own behalf (r). It has been said that such an association would not be one for whose acts the candidate would be responsible (s). There may, on the other hand be a political association advocating the views of a candidate of which that candidate is not a member to the funds of which he does not subscribe, and with which he personally is not ostensibly connected, but at the same

time in intimate relationship with his agents respecting the canvassing of voters, and the conduct of the election, and largely contributing to the result. Such an association could be held to be one for whose acts the candidate was responsible (t).

An association representing one of the political parties may further the general interests of the party they represent, including work in connection with the preparation of the electors lists, without necessarily becoming an agent of a candidate; but the moment it appears that the candidate or his election agent adopt, either individually or collectively, the work that is done by that association in such a manner as to benefit by its agency quo the election, the association will become the candidate's agent (u)."

There are Indian decisions also on the point but the *Ratto decendi* of the authority under the amended law is that members of the committee entrusted with management as a party cannot become the agents because the word now used is 'consent' which is stronger than the latter word and the respondent under the amended law can be held to be guilty of a corrupt practice only if the act of conveying voters was itself proved to have been done with his consent or with the consent of election agent to avoid the election u/s 100 of the Act. In other words only persons who have personal intimacy with a candidate and were working to promote the election in some form as a relative, a close friend or a close associate over and above party affiliations can be treated as agents. In the absence of any evidence to this extent, it is difficult to hold that Brij Mohan had acted as an agent with the consent of respondent No. 1, more especially when there is no satisfactory evidence as said above, that he worked at all in the days of the election for the purpose of canvassing and the stand taken up by Brij Mohan that he was in charge of the office and the work was so much that he had no time to move about or was supposed to move about when he was working as General Secretary on behalf of the party and not for any individual candidate. In this connection, I may say in passing that I was not impressed in the course of his explanation with his answers in regard to his money matters with Suraj Bhan (P.W.33) and about the correspondence relating to Ex P.W.33/A and P.W.33/B referred to above. His reply in the matter of the satisfaction of the decree obtained against him by Dr. Suraj Bhan and execution taken out for its realization does not appear to me satisfactory as well. But beyond these matters concerning his personal affairs, the evidence brought on the record in order to connect him with the writing Ex P. 9 and having delivered the manuscript to the Gupta Printing Works on the basis of the talk introduced by the petitioner, he stands unscathed from the accusations levelled against him inasmuch as the allegations on both these counts (namely the talk attributed to the proprietors Joti Pershad and Des Raj of Gupta Printing Works at the time of search as well as the version of PWs 36, 37 & 38 about the manuscript Ex P. 9) have been held to be unfounded and fabricated stories to create evidence in support of the allegations. This disposes of sub-issue No. (v).

• 35. Sub-issue No. VI.

'Whether Om Parkash Jain, Vas Dev, Office Secy. DPCC, Om Parkash Jain, Om Parkash Bahl, Joti Pershad and Des Raj are deemed to have acted as agents of respondent No. 1 as defined in explanation appended to Sec. 123 of the R.P. Act in the matter of publication of posts P. 1 and P. 2.'

This sub-issue arises out of the allegations made by the petitioner in para 15A of the amended petition in which Brij Mohan and other office bearers of D.P.C.C. along with Om Parkash Jain, Om Parkash Bahl and proprietors of Gupta Printing Works, Joti Pershad and Des Raj were mentioned to have been responsible for the publication of the posters in question. Out of these, Brij Mohan has already been dealt with and so far Vas Dev, Office Secy., DPCC, Om Parkash Bahl, Joti Pershad and Des Raj are concerned, no evidence was led nor any arguments were advanced and accordingly they stand exonerated. Om Parkash Sharma who was made an accused in the complaint and in whose name the posters purport to have been issued were treated as bogus and pseudonym was also not discussed by the petitioner for the purpose of agency. Shri Gnan Singh Vohra arguing on behalf of Om Parkash Sharma adopted the arguments of Mr. Chawla and maintained that Shri Sharma believed the published allegations to be true. Shri Om Parkash Jain accordingly remains to be dealt with and in his case some evidence was also brought on the record to show that he was working for respondent No. 1 in the days of election and canvassed for respondent No. 1. The arguments advanced in this connection however were not consistent and were made in a diffused manner

off and on. The sum and substance of the whole argument is that Om Parkash Jain was an active worker of respondent No. 1, Shri Brahm Parkash and he used to attend meetings make speeches and as well as canvass voters for him. Further more, that he was seen pasting posters on the walls at night as deposed by P.W. 12 Ram Chander Goel. His other activity was alleged to have maligned Shyama Charan Gupta by collecting people and in this manner he was working against the Jan Sangh candidate in the furtherance of the cause of respondent No. 1. It was also asserted that Om Parkash Jain by his subsequent conduct has shown that he was in the congress and worked actively during the course of election. In this respect, reference was made to a note on the record that Shri Jain was present in court during the proceedings and was giving instructions to Shri Chawla, counsel for respondent No. 1. It was also pointed out by Shri Ram Phal in the course of arguments that after the issue of notice u/s 99 of the R. P. Act to Shri Om Parkash Jain, he was actively working on the respondent side by way of taking notes and giving instructions to the counsel. In addition to this, Shri Ram Phal also at a later stage after the close of evidence in the case produced some more documents in the form of receipts and a nomination paper of Shri Phul Singh Saini for party election which purports to have been seconded by Om Parkash Jain. Shri Jain did not admit those documents having been in his hand and some of the receipts admitted were explained to have been issued for raising subscription for the mohalla committee, and not for Congress party.

36. On the other hand, Mr. Jain arguing himself and Shri Chawla in reply explained the position of Om Parkash Jain by referring to his detailed statement wherein Mr. Jain has categorically denied that he had at any time worked for respondent No. 1 or that he was in the Congress party. Reference in particular was made to his previous connection with the R.S.S. and Jan Sangh party from which he was expelled according to the petitioner and left along with others according to the statement of Mr. Jain. It was maintained that in the circumstances that he was placed, he opposed the candidature of Shri Shyama Charan Gupta, a nominee of Jan Sangh party in power. It was stressed that Om Parkash Jain of course as borne out by the statements of some of the DWs also used to advise people not to vote for Shyama Charan Gupta who had abused his power in his capacity as an office bearer of RSS and Jan Sangh party. Mr. Chawla while taking the Tribunal into the statement of Mr. Jain emphasised that Om Parkash Jain was a close associate of Shyama Charan Gupta having been a Mukh Shikshak of a Branch and was in possession of certain facts which had formed the basis of the subject of the posters issued on behalf of Om Parkash Sharma in his capacity as General Secretary of Yuvak Samaj. It was next argued that Shri Brahm Parkash respondent No. 1 in his sworn testimony also stoutly affirmed that he did not know much less had any connection with Om Parkash Jain and that he came to know Mr. Jain long after the election in connection with the Tenants Association. Mr. Chawla concluded that Om Parkash Jain was a member of the Yuvak Samaj and as such was responsible for the issue of posters P. 1 and P. 2 but there was no tangible and reliable evidence that he was a Congress worker or had worked for respondent No. 1. It was stressed in this connection that if he had been working against Shyama Charan Gupta of his own group against respondent No. 2 it could not be inferred that he was working as a canvassing agent of respondent No. 1 until and unless it is proved by evidence that he did so with the consent of respondent No. 1 or his election agent. Learned counsel relied upon the legal aspect of the question discussed in this connection in the case of Brij Mohan. Lastly, replying to the allegation that Om Parkash Jain was present in court at one time, Mr. Chawla submitted that so many persons come in court room which is a public place and as explained by Om Parkash Jain he came one day of his own accord. Subsequently after the notice of 99 R. P. Act of course he was duty bound to be present. Mr. Chawla retorted and referred to the conduct of respondent No. 2 who was all the time giving instructions to the petitioner in the course of evidence as well as arguments. Replying to the argument of the petitioner that Shri Jain was seen pasting posters at night time, reference was made to the statement of Shri Ram Chander Goel (P.W. 12) wherein he states that Om Parkash Jain was pasting the posters on the walls and made certain remarks. It was urged by Mr. Chawla that this story is not believable and has been connected to show Om Parkash Jain's interest in the alleged activities. Further-more, there is no corroboration on this point of any body else. Secondly the alleged place was near the office of Shyama Charan Gupta and as such the matter should have been reported straightaway. Regarding the other assertion that Om Parkash Jain was maligning respondent No. 2 and propagating against him, Mr. Chawla submitted that the evidence is of no value so long it was not proved that he was working as an agent of respondent No. 1. Further-more, he had his own grievance and enmity with respondent No. 2 and whatever he did at all, it was of his own accord without any connection with respondent No. 1 or his election agent.

37. Now the arguments of both sides on this question have been reproduced at length and the point for determination is as to whether Om Parkash Jain worked for respondent No. 1 and it was proved on the record by cogent evidence that he did so with the consent of respondent No. 1. There is no evidence at all of consent or his association with respondent No. 1. The petitioner in his evidence, of course, has referred to Mr. Jain's conduct in the days of elections and relied on the testimony of P.W. 12 Ram Chander Goel and PWs, 36, 37 and 38 discussed above in sub-issue (ii). Regarding the statement of Ram Chander Goel, he is an omnibus witness and has stated almost on all issues. He has already been disbelieved while dealing with Brij Mohan and this part of his statement that he had seen at mid-night Om Parkash Jain pasting posters also does not carry conviction in the light of circumstances referred to in the arguments detailed above. The other evidence relating to the story adumbrated in the meeting at the place of Gulzari Lal Chopra has already been rejected on good grounds and has not been believed by the Tribunal. Furthermore, respondent No. 1 has emphatically denied having any concern or connection with Om Parkash Jain so far so that according to his statement Om Parkash Jain was not known to him and in the absence of any good evidence on the contrary it is difficult to hold that Om Parkash Jain with all his activity against Shyama Charan Gupta acted as an agent of respondent No. 1 sheer on surmises. I hold accordingly.

38 Sub-issue No. VII.

"Whether bill No. 635 in the name of DPCC makes the body responsible for the publication of P. 1 and P. 2."

It may be said at the outset in this connection that this bill No. 635 was taken at the time of search by the petitioner and respondent No. 2 and a photostat copy of the same was also taken from the court of the Magistrate in the first week of April, still no mention of it was made in the petition or in the amended particulars as given in para 15A. The note given by the then Member of the Tribunal with this issue quoted above also reveals that the persons mentioned in para 15A are to be dealt with and not DPCC as a body. At any rate, the bill No. 635 is in the name of DPCC and not exactly in the name of General Secretary DPCC. This bill however was sent to DPCC office for payment which clearly shows that Gupta Printing Works was of the opinion that these posters were issued at the instance of DPCC and that body had to make the payment. The petitioner in the course of arguments capitalised this point and I think with justification that when the bill was sent to DPCC, the natural inference was that DPCC was responsible for the issue of these posters. Mr. Chawla in reply argued that the bill, in the name of DPCC of course appears to have been prepared by the Gupta Printing Works but it was done so by mistake on the basis that the matter was against Jan Sangh. Mr. Chawla referred to another bill Ex P. 3, which purports to have been issued by Anti-Communal Front and was not criticised as done on the lines of P. 1 and P. 2. This bill was also prepared in the name of DPCC but was paid by Shri Jumna Das Akhtar, Secretary of Anti-Communal Front and payment accepted as borne out by Ex P.W. 71/A. This bill is No. 625 (Ex. P. 11) and is dated 24th February 1957. On 26th February 1957 a letter was sent by Shri Akhtar to the press, Ex DW 71/B for the delivery of the posters and the payment was made. The learned counsel for respondent No. 1 emphasised that if this mistake was made in the case of another poster P. 3, admittedly issued by Anti-Communal Front and the payment made by them, same mistake can easily be reconciled in the case of these posters P. 1 and P. 2. The argument exactly is that the proprietors of Gupta Printing Works prepared both bills Nos. 635 (which relate to P. 1 and P. 2) and No. 625 (which relate to P. 3) in the name of DPCC because the matter was against Jan Sangh. The argument was reinforced that in the case of Ex P. 3, no objection has been taken by the petitioner that the bill was in the name of DPCC and as such DPCC was responsible for it. But in the case of P. 1 and P. 2, this objection is being capitalised in order to connect Brij Mohan which is untenable. The other argument was that all the manuscripts which were sent for printing to Gupta Printing Works by DPCC bore the seal of DPCC but Ex P. 9 admittedly does not bear any seal. The counsel concluded that in the preparation of bill, the mistake was *bona fide* as explained above.

There was some arguments with regard to the supply of paper by DPCC for the printing of its posters, the account of which is given on the back of bill No. 645. Shri Ram Phal petitioner contended that these posters P. 1 and P. 2 were printed on the paper supplied by DPCC and this also indicates that the order was from the DPCC. Mr. Chawla controverting the argument submitted that there is no evidence on the record that any paper was supplied by the DPCC in the first instance and there is no date about the writing at the back of bill No. 645 about 'kagaz ka hissab'. Shri Des Raj as court witness has stated that the original bill

No. 645 was sent to DPCC sometime after 2nd March 1957 and before 13th March 1957 while bill No. 635 bears the date 2nd March 1957. Further-more this account is not on the original bill No. 645 and there is no evidence about the supply of paper by the DPCC. It was just possible that this note was by way of memo kept by Des Raj on bill No. 645. It was emphasised moreover that if it was rendition of account with DPCC, then it must have been sent on the original bill sent to DPCC but there is no mention of the paper account on the back of original bill No. 645 dated 4th March 1957. The counsel proceeded that regarding the question as to who had placed the order with the press if not by DPCC, it was not for the respondent to explain yet in order to deal with the evidence, he maintained that it was done by Om Parkash Sharma, Secretary, Yuvak Samaj in whose name the posters were issued. Om Parkash Sharma has sworn on the point that it was he who had given the manuscript in the press and Des Raj Gupta, Proprietor, Gupta Printing Works also supports that the manuscript was given by Om Parkash Sharma. Mr Chawla contended that the onus was on the petitioner to prove that the respondent was responsible and in the absence of any evidence brought on the record, excepting surmises that the bill was wrongly prepared in the name of DPCC, the DPCC cannot be held answerable for the bill. The original bill No. 635 moreover shows that the bill was returned with the remark written by Brij Mohan dated 13th March 1957 which is a pointer to the fact that the bill was not accepted by the DPCC office.

39. Now the original bill No. 635 shows, that the Accountant on the receipt of the bill put it before the General Secretary, Shri Brij Mohan who passed the following remark on it.

"Acct

DPCC has nothing to do with this poster. Why have they sent this bill to us?"

BRIJ MOHAN.

dt. 13.3.57."

On the left side there is another note

"O.S. Seen.

25th March 1957

The Office Secretary Shri Amba Pershad accordingly returned the bill to Gupta Printing Works with a letter dated 30th March 1957 wherein it was stated —

"Returned. We never placed any order for its publication.

dt. 30th March 1957."

Another note shows that the bill was received back by Gupta Printing Works on 2nd April 1957 with the words:—

"Received

2/4".

On the perusal of this bill, it is abundantly clear that Brij Mohan did not accept the bill and in writing denounced the sending of this bill to D.P.C.C., and this was done 6/7 days after the result of the election was out and much earlier to the complaint which was lodged on 1st April 1957. The note of the Office Secretary is of 25th March 1957 i.e. earlier to the complaint and the letter returning the bill by the Office Secretary bears the date 30th March, 1957. This regular record of the office amply reveals that the bill was not accepted and it is also in evidence that subsequently demand was made from Om Parkash Sharma who sent Rs. 35 with a letter No. 33, dated 30th April, 1957 written on a form of Yuvak Samaj. There was some discussion on the point that this letter No. 33 sent by Om Parkash Sharma was not genuine and has been brought on the record in order to show that DPCC had not paid the amount but the notes on the original bill described above clearly indicates that the DPCC did not own the publication of these posters to which this bill No. 635 relates. It is a different matter that in some calendestine way anything had happened but on the record so far the evidence goes the DPCC disowned the bill and the publication, much earlier to the complaint when the dispute arose. In these circumstances, notwithstanding of the circumstance that the preparation of bill in the name of DPCC normally goes to show that DPCC was concerned with the bill yet in view of the circumstances in which this bill along with bill No. 625 which was paid by Secv. Anti Communal Front and the disowning of the DPCC soon after when there was no quarrel over the matter leads to the conclusion that DPCC has not been

proved connected and cannot be treated to have been responsible for the publication of the posters, which as held above was made by Om Parkash Sharma, Om Parkash Jain as well as Phul Singh Saini and others, members of Yuvak Samaj. This sub-issue is answered accordingly.

40. Sub-issue No. VIII.

"Whether Ex. P.3 a poster issued by Anti-Communal Front constitutes any corrupt practice as contemplated u/s 123(4) of R.P. Act."

This poster was admittedly issued by Anti-Communal Front and the bill was also paid by the Secretary, Shri Jumna Dass Akhtar, D.W. 71 as per receipt Ex. D.W. 71/A. The allegation in the petition is embodied in paragraph 15 which was amplified by another paragraph 15-A at the time of amendment. The allegations specifically are to the effect that on or about 28th February 1957, posters purporting to have been issued by a body known as Anti Communal Front and printed by Gupta Printing Works were pasted in several places in the Delhi Saddar constituency asking the electorate to refrain from voting in favour of the party which had among its demands the demand of Akhand Bharat which was the demand of Godse, the murderer of Mahatma Gandhi the father of the nation. It was alleged *inter-alia* that there was a clear suggestion by the said poster that respondent No. 2 was one of those who directly or indirectly was involved in the murder of Mahatma Gandhi and as such votes must not be cast in his favour. The copy of the poster was annexed as annexure 'C'. The only evidence adduced in support of it was a copy of the poster and some of the PWs who deposed that they had seen these posters displayed on the walls in the constituency. In the course of arguments on issue No. 1, this poster was also referred to in a luke-warm manner but no argument was advanced as to how respondent No. 1 was connected with the publication of this poster; nor any attempt was made in the course of argument to show that this poster also satisfied the requirements of Section 123(4), namely that the allegation was a statement of fact and relates to the personal character of Shyama Charan Gupta or that it was false or was not believed to be true. Now in the absence of any argument, any discussion is hardly called for. At any event, the allegation does not satisfy the essential requirements of Section 123(4) under which this too was attacked by the petitioner. Secondly, no evidence was adduced that it was issued at the instance of respondent No. 1 or the Anti-Communal Front body was working as an agent of respondent No. 1. In these circumstances, there is no force in this sub-issue and it must fail.

41 This brings me to the poster itself, Ex. P.1 printed in Hindi and its copy Ex. P.2 printed in Urdu. The allegations made have been quoted above at the very outset and these are 6 in No. and a general remark which may be numbered as 7. Now these are to be applied and put to test within the purview of the elements of Section 123(4) detailed as under:—

- (1) That the publication was made by a candidate or his agent or by any other person.
- (2) It must be a statement of fact.
- (3) It must be in relation to the personal character or conduct of any candidate.
- (4) That the statement was false or believed to be false or not believed to be true.
- (5) The publication was reasonably calculated to prejudice the prospects of that candidate's election.

The first ingredient namely the publication has already been considered in sub-issue No. (I) and the finding given is to the effect that the posters Ex. P.1 and P.2 were got printed and issued by the Yuvak Samaj in the name of General Secretary of the Yuvak Samaj, Om Parkash Sharma. On the question of display and circulation of the posters, it was contended by respondent's side that there was no display of posters as deposed by several DWs and the publication was not proved to satisfy the requirements of Section 123(4). Suffice it to say that the defence evidence is of negative nature and is of no avail. It has been proved by positive evidence on the side of the petitioner that the posters were displayed and were seen by several persons who read the contents. Om Parkash Sharma in his deposition has said that the posters were printed but he was approached by Shyama Charan Gupta whom he knew earlier along with his brother Khazan Singh and others and requested him not to display the same. And that the whole bundle was made over to them and actually it was not publicised or displayed. This part of the statement was not corroborated by any other witness and as such must be repelled. In the circumstances the first element is proved on the record

to the extent that the publication was made by some persons belonging to Yuvak Samaj but not by respondent No. 1 or by his agent as held above. The next ingredient of Section 123(4) is whether the allegations made are statement of facts. On the perusal of the allegations, it is abundantly clear that all these amount to statement of facts and are not opinions. The next ingredient is as to whether these relate to the personal character of the candidate, i.e. respondent No. 2. On this, the counsel discussed the legal aspect of the question and referred to some English cases and as well as to some Indian decisions in the first instance. The gist of the authority cited at the Bar is to the effect that when the criticism is against the public activities or in the capacity of a politician or a public worker then it does not relate to the personal character of the candidate but when it is beneath the politician, then it touches the personal character. Now, the word 'personal' has its own significance in contra-distinction to the word 'public' and as such the distinction between the statements relating to the personal character or conduct and between the statements in relation to the candidates' political and public conduct is real. It appears the statute does not prohibit in the election campaign all kinds of criticism which even may not be strictly true relating to the political behaviour and opinions of the candidate. It is only when the man as said above beneath the politician is attacked or his honour, integrity or veracity assailed in the statement that it comes within the mischief of the section. The basic English authority in this connection is the 'North Louth' case in which this question was aptly considered and Mr. Justice Gibson held that the question whether a particular statement is in relation merely to the public or political character of a candidate or with respect to his personal character is to be decided on the facts and circumstances of each case. The learned Judge pertinently remarked that—

"A politician for his public conduct may be criticised, held up in obliquy, for which statute gives no redress, but when the man beneath the politician has his honour, veracity and purity assailed, he is entitled to demand that his constituents shall not be poisoned against him by false statements containing such unfounded imputations".

Mr. Justice Maddon has also emphasised the same view in his judgment in the same case. The question, he remarked, is readily one of commonsense and depends of an answer to the meaning attributed to the document in question. There are some other English authorities in which this question was discussed which have been quoted in the case of 'Shri Hari Vishnu Kamath Vs. Shri Magan Lal Bagri' decided by Election Tribunal, Jabulpore, published in the Gazette of India extraordinary of February 12, 1958 and relied upon by the petitioner.

42. Applying these principles enunciated above on the allegations made in the poster P.1 and P.2, it will be seen that the first allegation namely that Shri Shyama Charan Gupta was only Matriculate in English but was giving out that he was B.A. (Hons.) obviously relates to his personal character. Similarly, the second one that Shyama Charan Gupta has taken forcible possession of a godown belonging to R.S.S. also relates to his personal character. The third allegation that he mis-appropriated the funds of R.S.S. also touches his personal veracity and honesty. The fourth allegation that he abstained to proceed to Goa on his excuse of the illness of one of his relations however appears to be on the border line inasmuch as Shri Shyama Charan Gupta was in charge of Goa satyagraha and in his political career was expected to participate in the satyagraha himself also and as such this allegation relates to his public activities and I do not feel inclined to treat it as a part of his personal character. Next allegation is with regard to the misappropriation of the price of the jeep belonging to R.S.S. This also touches the personal character and the veracity of respondent No. 2. The last item namely that respondent No. 2 had spoken against the refugees in a speech alleged to have been made by him at Ghaziabad to all intents and purposes is an allegation in respect of his public career. Mr. U. M. Trivedi learned counsel for respondent No. 2 who was permitted to get his part of the case argued by his own counsel frankly admitted that this allegation does not relate to the personal character of respondent No. 2, Shri Shyama Charan Gupta. The last remark was also not pressed because that amounts to an opinion that respondent No. 2 was not a deserving man and was a weak man unfit for parliamentary seat.

43. The other element in Section 123(4), onus of which lay upon the petitioner, is as to whether the statement of fact was false and which the publisher either believed to be false or did not believe to be true. It is note-worthy that the word in between 'was false and believed to be false or did not believe to be true' is 'and' which is conjunctive and not disjunctive and as such in the first place it is to be proved that the statement was false and in addition to the falsity, it must further be proved that the person believed it to be false or did not believe it to be true. In other words if the publisher bona-fide thought that the statement was

correct or had reasonable grounds to believe that it was correct, the condition shall not be satisfied. The words used in Section 123(4) are also used in various definitions in the I.P.C. where a distinction is marked between belief and knowledge. It follows that it is the belief of the person making it about the truth or falsity of the statement which actually counts. Of course all the grounds shall have to be scrutinised and examined on which any such belief can be based. It may also be stated that no hard and fast rule can be laid down and each case is to be judged on its particular merits and no one case can be an authority on all fours, one way or the other. Shri Ram Phal petitioner arguing on this part of the issue regarding the truth or falsity mainly relied on Shri Shyama Charan Gupta's statement. It was argued that respondent No. 2 had emphatically denied these allegations and according to his statement the first allegation made in the statement was false and not believed to be true as proved by the intermediate certificate filed on the record. It was urged that he was Prabhakar which is equivalent to B.A. in Hindi. He is also Sahit Rattan Part I and he never held out that he was B.A. (Hons). Regarding the other items, it was submitted that the allegations are incorrect and false as sworn by Shyama Charan Gupta supported by other witnesses. Specific reference was made to the statement of Shri Parkash Chand Bhargava (P.W. 26) who has been the General Secretary of the Delhi Branch of R.S.S. as well as about the allegation relating to godown, jeep, misappropriation of funds etc. And that Shyama Charan Gupta was at no time dealing with the funds of R.S.S. It was argued that Shri Parkash Chand Bhargava, the General Secretary has given a clean certificate to respondent No. 2, and as such all the allegations made against him were false. Reference was also made to the statement of Kidar Nath Sahni, the election agent of respondent No. 2 as well as Duli Chand (P.W. 18). Touching the legal aspect, Shri Ram Phal made a reference to the wording of Section 123(4) and submitted that in order to constitute a corrupt practice, it was enough to show that the allegations are false.

44. On the other hand, Mr. Chawla on this ingredient of Section 123(4) viz. 'falsity' vehemently contended that the onus lay heavily upon the petitioner to prove each item that it was false to the knowledge of the other side who published them and in this connection, reference was made to Om Parkash Jain, (P.W. 19), a Municipal Commissioner who in cross-examination has stated that respondent No. 2 told him that he is B.A. (Hons). This witness P.W. 19 has also admitted that he was a covering candidate of respondent No. 2 in this very election. Mr. Chawla argued that this part of the statement of petitioner's own witness definitely shows that respondent No. 2 was giving out to others that he was B.A. (Hons). Reference was also made to Ex. D.8, a brochure on the life of respondent No. 2 which was got printed by him in which the word used are "English men unchi talim hasil ki hai". The counsel contended that when he himself says in his life account that he had received 'unchi talim', it can be safely inferred that he was giving out that he was B.A. (Hons). Reliance was placed on a book alleged to have been written and published by respondent No. 2. It was urged that reference to the book was made at the earliest on 28th October 1957, in the statement of Duli Chand (P.W. 18) and Om Parkash Jain (D.W. 68) has given the whole description and made specific reference to the book 'Andhkar ke bad nav parbhat'. This witness also filed an affidavit at a later stage along with an application for summoning the said booklet, which contains the name of the press in which the book was published and reference was also made in the affidavit to the circumstances under which the material entry in the register of State Press Officer was alleged to have been torn. Mr. Chawla argued that these circumstances speak by themselves and in the absence of any counter affidavit by the petitioner, the affidavit of Om Parkash Jain should be believed. Mr. Chawla concluded that in the light of all these facts and circumstances, it was definitely proved that the first item namely that Shyama Charan Gupta used to pass as B.A. (Hons) in the eyes of public was not false. The learned counsel also invited the attention of the Tribunal to the statement of Shyama Charan Gupta where in cross-examination, he has stated "I am not the author of any book". Mr. Chawla referred to the copy of the catalogue brought on the record in which under the heading 'Politics' in item No. 3 the name of Shyama Charan Gupta is mentioned as the author of a book styled 'Bhartiya Jan Sangh'. The counsel maintained that the catalogue is a copy of the gazette and the entry clearly falsifies the statement of Shyama Charan Gupta namely that he was not author of any book.

45. Regarding the other item pertaining to 'godam per kabza', Mr. Chawla made a reference to statement of P.W. 52, respondent No. 2 wherein he has stated that two godowns were taken possession of after 1950 in the name of the joint family. The counsel submitted that according to his statement on this point, the period from 1948 to 1950 remains uncovered and presumably, the godown was in the possession of R.S.S. during this uncovered period. It was argued that in order to cover the period ranging from January 1948 to 7th June 1952, respondent No. 2

has manufactured various receipts of 1948, which were brought on the record along with a rough lease deed written in pencil dated 24th January 1948. Mr. Chawla contended that these receipts and the deed placed on the record runs counter to the statement of R.W. 1 Harnam Singh examined on behalf of Om Parkash Jain after the notice u/s 99 of the Act was served upon him. This Harnam Singh has stated unequivocally that he was a refugee and he had taken possession of this godown but the R.S.S. people who were helping refugees in those days asked him to give the possession of the godown to the R.S.S. management for their use. Mr. Chawla maintained that the petitioner was to prove that this allegation was false and as such it was expected that he should have produced some evidence in the form of account books maintained by the firm regarding the payment of rent. The landlady Mst. Intul Qayum who was said to be in Delhi according to the statement of Shyama Charan Gupta should have been produced in order to refute the allegation and to prove that the allegation was false to the knowledge of those who published posters P.1 and P.2. The learned counsel finally submitted that the falsity was not proved and the correctness of the allegations has rather been proved and the receipts produced now for the uncovered period are fabricated ones inasmuch as according to the statement of Mr. Shyama Charan Gupta himself the possession of godown was actually taken by the firm in 1950. Adverting to the third item namely the mis-appropriation of R.S.S. funds, Mr. Chawla argued that the funds were admittedly raised by voluntary contributions and were not entered in any book but the Vibhag Parmukh who was incharge of the division used to deposit the amount in the central fund. The counsel explained that Vibhag Parmukh is an officer between the centre and the shakha and there is no record either in the shakha or centre or at least it has not been produced. The counsel proceeded that Shyama Charan Gupta was the Vibhag Parmukh i.e. incharge of several branches and in that capacity the monetary contributions were used to be deposited by him at the centre. The criticism was that full amounts were not deposited as stated in the statement of Om Parkash Jain who was also incharge of one of the shakhas. The people believed that there was some bungling in the proper deposit and as such they did not believe the allegation to be false. It was urged that the belief was well-founded in the circumstances of the case and in the absence of the proof of falsity which was on the petitioner, it can be safely inferred that the publishers had the belief about the correctness of the allegations. Reference was made to the statement of Om Parkash Jain wherein he has stated that a complaint was made to Shri Basant Rao Oak to the effect that lesser amounts were deposited but this part of the statement was not touched in cross-examination by the petitioner side. Regarding the allegation of Goa satyagraha, Mr. Chawla submitted that in the first place it does not relate to the personal character of the candidate and it relates to his public life. As such it was not beneath the politics if that principle is to be adopted. The counsel on the point of falsity maintained that the mere fact that Shyama Charan Gupta was taking part in the satyagraha and was one of the organisers, he was expected to go to Goa. His explanation that he was working in the office and was not called upon to go was much too general and it can be rightly said that when he did not go, those who published the allegation did not believe it to be false. Arguing on the allegation of jeep, the argument of Mr. Chawla was that the onus was on the petitioner to prove the falsity by the best evidence that was available namely about the purchase of the jeep in question. The account books were available but were withheld and were said to be with his father. Mr. Chawla contended that his father could come forward to purge his son as well as himself from the charge levelled against his son of having misappropriated the money fetched by the sale of the jeep belonging to R.S.S. The learned counsel urged that jeep has its own significance and it does not stand to reason that businessman like Shyama Charan Gupta and his father could have purchased a jeep, which is generally used for rough work. Regarding the speech, alleged to have been made by respondent No. 2 at Ghaziabad, Mr. Chawla argued that it does not relate to personal character as admitted by Shri Trivedi, learned counsel for respondent No. 2 and as such need not be replied. Finally, the counsel contended that the word 'and' between false and not believe to be true is conjunctive preposition and as such it is also to be proved that the allegation was not believed to be false which was not done.

46. Now on the appreciation of the arguments which have been reproduced above in extenso out of the copious notes taken at the time of arguments, it would suffice to touch every item briefly without any further elaboration. With regard to the first item, the difficulty that comes in the way of respondent No. 2 is that one of his own witnesses Shri Om Parkash Jain (P.W. 19) a Municipal Commissioner of this constituency has stated that respondent No. 2 had told him that he was B.A. (Hons). He is petitioner's own witness and a man of status and in

no way shown to be inimical to respondent No. 2. This witness has stated as follows:—

"I know the academic qualifications of respondent No. 2. He is B.A. I cannot say from which university he graduated, nor can I say when he graduated. I learned it from respondent No. 2 that he is B.A. (Hons).

Secondly, the definite statement of Shri Shyama Charan Gupta namely "I am not the author of any book" stands repudiated by the production of the catalogue, a gazette produced by the State Press Officer wherein his name is mentioned and the name of Rajhans Press is also mentioned. Shri Om Parkash Jain in his affidavit before summoning the State Press Officer had definitely stated that the book was published in Raj Hans Press and the copy was sent to the State Press Officer. Full particulars are generally written in the register but the State Press Officer who was summoned for the production of the book stated that the book was not available and the entry in the register has been found torn. Mr. Chawla counsel for the respondent and Om Parkash Jain insisted for the production of the register as well as for recording the full statement about the tearing off the register but in view of the fact that the State Press Officer was summoned only for the production of the book and not as a witness, the Tribunal did not allow the full statement to go on the record. At any rate in the absence of the counter affidavit for which the petitioner was called upon to file but he wanted to file an affidavit of somebody else and was not prepared to file his own affidavit, I feel inclined to hold that the falsity was not proved or at least one who published the poster in question believed it to be true. Coming to the next item namely the forcible possession of the godown belonging to R.S.S. by Shyama Charan Gupta, it is also noteworthy that no tangible proof to prove the falsity was brought on the record and it was only at a later stage (when Shyama Charan Gupta was summoned for further cross-examination) that respondent No. 2 produced certain documents relating to the payment of rent after considerable reluctance. Of these documents one is a rent deed of June 1952 executed by Mst. Imtul Qayum and Zubeda Khatun daughters of Haji Mohd. Shafi in favour of Shri Sham Sunder brother of Shri Shyama Charan Gupta. In order to explain the intervening period from January 1948 to June 1952 (53 months) receipts of rent for 7 months viz. from January to July 1948 were placed on the record along with a receipt alleged to have been executed by Mst. Imtul Qayum for Rs. 1,100 in relation to the payment made in the form of lump sum for the period commencing from August 1948 to June 1952 (46 months). A pencil copy of a draft of another rent deed, dated 24th January 1948 was also brought on the record. Taking all this documentary evidence on the face value, regular rent deed was taken some time in June 1952 and according to the pencil rough copy in January 1948. It appears that in the days of disturbances this evacuee property was taken hold of by some one. That may be either by R.S.S. people or by Shyam Sunder brother of Shyama Charan Gupta, or by Harnam Singh R.W. Now Shyama Charan Gupta does not say in a straight manner that this evacuee property was taken possession of by his brother and subsequently was regularised by the execution of rent deed in June 1952. He has rather stated, as quoted above, that the family took possession of the godown in 1950. In the face of this statement, the evidence produced by him relating to January, 1948 is of doubtful nature. It is also not intelligible that why rent was not paid for a long period of 46 months when according to the terms of rent deed (a pencil copy of which dated 24th January 1948 is placed on the record and relied upon) was executed by Shyam Sunder in favour of Imtul Qayum. All these circumstances reflect adversely and cast grave suspicion on the actual transaction as relied upon by respondent No. 2. Circumstances as they say speak some times much more than the facts, and cannot lie. Taking all these facts into consideration, one is led to the belief that even if the statement of Harnam Singh be not accepted, it does not stand to reason that any legal transaction was made in 1948 between the firm Sham Sunder and Shyam Charan Gupta and the daughters of Haji Mohd. Shafi. Further more, Mr. Shyama Charan Gupta asserts in his statement that Mst Imtul Qayum is still in Delhi, but she was not produced nor was summoned by the petitioner in order to prove the falsity of the allegations onus of which lay upon him. The inference accordingly that one can reasonably deduce from all these circumstances is that the property went into the possession of the firm sometime in September 1947 or in 1948 and no rent was being paid but when the things settled down and the evacuee property was controlled by the Rehabilitation Department, the position was regularised by the execution of a deed in 1952. The question naturally arose what to do about the intervening period and a receipt for 46 months rent was executed or I would say, was made to be executed by Mst. Imtul Qayum to cover the period and some receipts were also taken of course under their signatures but not necessarily in 1948. At any rate, for want of cogent and reliable proof,

the whole thing rests on conjectures which in the natural course of events can be taken note of under the provisions of section 114 of the Evidence Act. The presumption under that law is 'that conformity with the ordinary course of nature ought always to be presumed and when inferring the existence of fact from other facts and circumstances courts of justice do nothing more than apply a process of reasoning which the mind of any intelligent being would under the same circumstances had applied for itself in regard to the springs of human action and the habits of society'. The sources of these presumptions of fact of course are common course of natural events, the common course of human conduct and the common course of public and private business. Taking these courses in the circumstances, I feel myself fortified in the observations given above. Accordingly the falsity was not proved to the hilt as was required, and it can safely be inferred that those who got the posters published did not believe it to be false. The result is that the ingredient with regard to falsity has not been established and the publishers did not believe it to be false.

47. The next item relates to the misappropriation of R.S.S. funds. On this point, Mr. Ram Phal petitioner while arguing had submitted that the allegation was very serious and was made falsely without any basis for its belief by the other side, while Shri Chawla's argument described above was that the procedure adopted by the R.S.S. people in the matter of raising funds was by voluntary contributions and the Vibhag Parmukh used to deposit it in the central fund. Now argument of Mr. Chawla has been supported on the record by Shri Om Parkash Jain as well as Phul Singh Saini both of whom admittedly have been in the R.S.S. for a pretty long time. The statement of Phul Singh Saini in this respect is as follows:—

"It is correct, that Shyama Charan Gupta has been mukh shikshak of Deputy Ganj Shakha. It is also correct that Om Parkash Jain was mukh shikshak of Deputy Ganj Shakha, when Shri Shyama Charan Gupta was Vibhag Adhikari. It is correct that there was a practice of guru dakshana prevailing in R.S.S. shakha and it is continuing now. It is also correct that mukh shikshak used to collect the amount of dakshana in their presence. The procedure was that Vibhag Adhikari and mukh shikshak both used to deposit the amount in the central body. Of course, it is correct that if mukh shikshak was not present, Vibhag Adhikari used to deposit the amount in the central office."

Mr Om Parkash Jain also has stated as below in this connection:—

"In 1946/47, respondent No. 2 became the Vibhag Parmukh of the Saddar Bazar area. All the collections which were made from the shakhas in Saddar Bazar area were paid to the Vibhag Parmukh and he deposited those in the provincial office. Some people had raised objection that the money which was collected was not deposited in full in the funds of the body. Automatically impression was that the money was misappropriated by respondent No. 2".

In cross-examination by the petitioner and respondent No. 2, this witness further stated—

"The procedure about the raising of subscription was that it was collected in the presence of the audience but subsequently a list was prepared giving the amounts after having been counted and then made over to Vibhag Parmukh. In those days respondent No. 2 was the Vibhag Parmukh of Saddar Bazar. Shyama Charan Gupta in his capacity as Vibhag Parmukh used to deposit it with the provincial office. Office incharge of the provincial office in those days was Shri Mussadi Lal Parkash Chand Bhargava was the Provincial Secretary in those days. All Vibhag Parmukhs used to deposit the money with the provincial office incharge. It is correct that Shyama Charan did not deposit the gur-dakshana of 1946 in my presence but Mussaddi Lal asked me about the total amount of Saddar Bazar. No action was taken by the provincial office incharge against the respondent in 1946 because there was no written record. About 20 thousand rupees were collected in 1946 in Saddar Bazar and about 25,000 rupees in 1947. I was told by Mussadi Lal in 1946 that respondent No. 2 deposited about rupees 18 thousand. I brought this to the notice of Basant Rao Oak, the Provincial Organizer."

This statement like one on the jeep speaks by itself and in sequence ends with a complaint made to Shri Oak. It is difficult to throw out this part of the statement altogether sheer on the plea that Om Parkash Jain was inimical to Shyama

Charan Gupta. So far the enmity, it cuts both ways, and so far the fact goes that Om Parkash Jain and Shyama Charan Gupta were associates and working together it rather be speaks that only those could know these facts who were in close touch at that time as to how the organization of R.S.S. was going. Mr. Om Parkash Jain has mentioned the names of Mussaddi Lal as well as of Basant Rao Oak which cannot be a figment of imagination. This is another matter that Mussaddi Lal and Shri Basant Rao Oak have not been examined. The difficulty in the matter of trial is that within the judicial standard petitions are heard as a civil suit and the tribunals have to work within certain provisions of R.P. Act which also ordain that endeavour should be made to dispose of the petitions as expeditiously as possible and preferably within six months. This case had a protracted trial and went on for about 18 months. Both sides with open eyes concluded their evidence. The parties presumably were supposed to know their case at the very beginning and could have proved the allegations one way or the other at the outset. Attempt was made by the petitioner at one stage after the close of evidence to produce certain documents and the Tribunal allowed where it was possible in the exercise of discretion to put those documents to Brij Mohan or Om Parkash Jain under the provisions of Order 13 rule 1(a) for admission even after close of the whole evidence. But the Tribunal was not working as a roving commission for the investigation of a certain matter and could not afford to act as wet-nurse to feed the cause of one side or the other by calling at all times witnesses which might have thrown some light on the doubtful nature of such factors. It was in these circumstances that the Tribunal did not deem it necessary to call Mussaddi Lal and Shri Basant Rao Oak of its own accord. Parties of course did not ask for summoning them. In these circumstances, this allegation is not proved according to the standard of proof as laid down in the matter of corrupt practices by the Supreme Court viz by precise and conclusive proof. I would add only that all facts put together and considered in the light of the complaint made to higher authority, the conjunctive part of the element regarding falsity namely 'believed to be false' or 'not believed to be true' has not at all been established.

The next item relates to Goa Satyagraha, I have already observed that this charge was more or less levelled against respondent No. 2 in his public capacity and does not relate to private character. The hard fact moreover is that he did not go to Goa and it can safely inferred that those who gave publicity to the posters had the belief that he had avoided to court arrest. The next item relates to the jeep. The arguments of Mr. Chawla in this respect reproduced above are very detailed. By non-production of the account books presumably in possession of the family of Shri Shyama Charan Gupta, respondent No. 2, the very best and material evidence has been withheld without assigning any reason, in regard to the purchase and subsequent sale of the jeep in question. The initial onus was decidedly on the petitioner who has been prosecuting the case, admittedly in conjunction with respondent No. 2. I am however conscious that sheer suspicions or basis for making imputations are not sufficient as held in some decisions but on the facts of this case, there is evidence brought on the record that the basis was not without good grounds. In his connection, reference can be made to the statement of Phul Singh Saini who has definitely stated that R.S.S. branches had jeeps and in Subzimandi where he was working a jeep was in possession of the R.S.S. branch. It was also stated that R.S.S. could not have the jeep in the name of the body and the registration was in the name of some one. Shri Shyama Charan Gupta was incharge of several branches i.e. of a division styled vilhag parmukh and in the days of disturbances the possibility is not excluded that some jeeps were pressed in the service of R.S.S. Om Parkash Jain (D.W. 88) on this point has stated as follows:—

"R.S.S. people of Saddar Bazar had purchased a jeep by raising subscriptions from the public and from the members of the body. That jeep was purchased in the name of respondent No. 2 as he was incharge of Saddar Bazar. The reason for purchasing the jeep in his name was that R.S.S. did not purchase any thing in the name of the body. The jeep was purchased in the beginning of 1947 from E. S. Peare Lal, New Delhi. The number probably was DLA 1555. In 1948, it so happened that some people including myself were arrested and put in jail and the jeep was disposed of by respondent No. 2 in our absence. When we were released from jail and came back we called upon respondent No. 2 to give account of the money received by the sale of the jeep but he did not give any account. No money was deposited in the funds of R.S.S. body. The matter was reported to higher authority and he remained no longer incharge. All those persons who had worked with respondent No. 2 upto 1947/48 had knowledge of all these facts stated by me. The members of the Yuvak Samaj comprised mostly of those workers who were workers.

of R.S.S. upto the year 1947/48 in Sadar Bazar and some others had also joined Yuvak Samaj."

This statement of Om Parkash Jain speaks for itself as it stands. It reads just a bare statement of certain events that followed about the sale of jeep in question. The petitioner in the course of arguments however strongly criticised the statement of Om Parkash Jain and asserted that this man was working in the congress and was the enemy of Shyama Charan Gupta and he should not be believed. An application for sanctioning the prosecution of Om Parkash Jain and Brij Mohan was also filed at one time but the Tribunal found that the election Tribunal under the provisions of the R.P. Act was not competent to take cognizance and as such had no jurisdiction to go into such matters. An attempt was also made subsequently to prove Mr. Jain having worked for congress by producing some receipts in the hand of Om Parkash Jain which he denied and explained that those receipts were not issued for raising subscription for the congress but relate to the subscriptions raised for Mohallah committee of which he was an office bearer. I have deemed it necessary to refer to this part of the argument against Om Parkash Jain in order to value as to whether this man can be believed in respect of the allegations made by him against Shyama Charan Gupta in the matter of jeep. I have already observed that he was alleged to have been expelled from Jan Sangh and has a grudge against Shyama Charan Gupta but as also remarked earlier his sworn testimony on certain points cannot be thrown over-board when it relates to certain facts which rather fit in with the circumstances. The statement accordingly shall have to be looked into at par with the statement of Shyama Charan Gupta who equally bears a grudge against Om Parkash Jain. Taking the statement on its face value, I find no good reason to disbelieve him when he gives certain details about the purchase and the disposal of the jeep. Shri Shyama Charan Gupta and the petitioner as discussed above cannot claim also to be straight in their depositions as to discredit the depositions of their party and ask the Tribunal to believe them alone; more especially when they have been disbelieved in their versions regarding the alleged talk between S.1. and the proprietors of Gupta Printing Works at the time of search and another alleged talk between Om Parkash Jain and Shiv Charan Gupta at the place of Shri Gulzari Lal Chopra, engendered and sponsored by the petitioner and respondent No. 2. In these circumstances the falsity of this allegation has also not been proved as required under law.

The only other item is with regard to the speech against refugees at Ghaziabad. This has already been discussed and Mr. Trivedi in his arguments had frankly stated that it does not touch the personal character and as such does not satisfy the requirements of Section 123(4). The 5th ingredient of Section 123(4) is that it was calculated to prejudice the election. I think it does not require any elaborate discussion. The poster was issued with the object of prejudicing the election of Shyama Charan Gupta and the only question is as to who is responsible for it. Mr. Chawla of course in this connection argued that there was time for them to refute these allegations and relied upon a decision of Tribunal wherein it was held that if it was not refuted the presumption was that the candidate had either admitted this allegation or did not care to refute them. But I think the evidence reveals that there was not much time for refuting the allegations because the publication was made on 1st March 1957 and polling took place on 3rd March, 1957. Moreover it is in evidence that Shyama Charan Gupta addressed some meetings wherein he told the people that the allegations were not correct. This disposed of all the elements or ingredients of Section 123(4) R.P. Act and in the light of the findings given above, issue No. 1-A fails almost on all essential counts.

48. The only other feature viz when this publication was made by Yuvak Samaj people (i.e. Om Parkash Sharma, Om Parkash Jain and others) the publication was made by any person and it is to be seen whether it was in the interest of respondent No. 1. In the first place, I am of the opinion that Om Parkash Jain and Om Parkash Sharma along with others published this poster for their own reasons because they did not like Shyama Charan Gupta who was responsible for their expulsion from Jan Sangh and as they knew some of his short-comings they, either to satisfy their own revenge or in the interest of public as claimed by them, gave publicity to these in the form of a poster according to the resolution passed in the Yuvak Samaj and as such this was not done by any person in the interest of respondent No. 1. But in the alternate if it was in the interest of respondent No. 1 as it must have helped to some extent respondent No. 1, even if it was not done with his consent, the case shall fall within the purview of Section 100(1)(d)(ii) which reads as follows:—

"That the result of the election so far it concerns the returned candidate has been materially affected (ii) by any corrupt practice committed

in the interest of the returned candidate by a person other than the candidate or his election agent or a person acting with the consent of the candidate or the election agent."

It will be seen that when a case falls under Section 100(1)(d)(ii) viz. that a corrupt practice was committed in the interest of a candidate by any person, then it shall have to be proved that it had materially affected the result of the election. In this connection, Mr. Trivedi learned counsel for respondent No. 2 in the course of arguments again frankly conceded that on material effect as embodied in issue No. 1-B, there was no need of argument in view of the Supreme Court authority because it shall be in a case of small difference of votes where it might apply. Mr. Ram Phal, petitioner, however did not agree with the view taken by Shri Trivedi and submitted that the publication had materially affected the result of election and referred to the deposition of some of the witnesses who in general have stated that these posters had changed their minds. Mr. Chawla on the other hand submitted that the allegation that voters were inclined to support respondent No. 2 was only a surmise and relied upon a Supreme Court decision reported in the matter of 'Vishasht Narain Sharma vs. Dev Chander and others' reported in 1954 S.C., 513. Their Lordships of the Supreme Court held—

"It cannot be held that the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies on the petitioner. Should the petitioner failed to adduce satisfactory evidence to enable the court to find in his favour on this point, the inevitable result would that the Tribunal would not interfere in his favour and would allow the election to stand."

Shri Chawla further submitted that the margin of votes secured by the returned candidate respondent No. 1 and Shri Shyama Charan Gupta was of more than 15,000 and in the light of the dictum laid down by their Lordships, and the evidence of one of two witnesses, it was inconceivable that the result was in any way affected by the publication of these posters by the members of the Yuvak Samaj

49. Now in the first place evidence of general type can hardly be considered as satisfactory to prove that the result of election was affected. Secondly, in the light of the dictum laid down by the Supreme Court, viz this matter shall have to be proved and the onus lies on the petitioner; it may be relevant to understand when a thing is said to be proved. Under section 3 of the Evidence Act, a fact is said to be proved when the court after considering the matter before it believes it to exist. In this perspective, it is only by positive evidence indicating the probability of how the returned candidate would have fared but for the alleged corrupt practice or say in this case if there had been no publication of posters Ex. P.1 and P.2 by the Yuvak Samaj. There is no such evidence and Mr. Trivedi, learned counsel for Shri Shyama Charan Gupta rightly and frankly conceded and did not press this part of issue as said above. The result is that even if publication made by Yuvak Samaj people was made in the interest of respondent No. 1, it did not affect the result of election materially so far it concerned the returned candidate. The issues No 1-A as well as 1-B fail and are decided against the petitioner.

50. Issue No. 2.

The allegations in respect of this issue are embodied in paragraphs 16, 17, 18 and 19(a) of the petition. The corrupt practice alleged to have been committed is to the effect that Shri G. B. Pant, Hon'ble Minister for Home Affairs, Central Government addressed a public meeting on 1st March 1957 and in the course of speech with the desire to help congress party in general and returned candidate in particular made a promise to the traders of Delhi that the Government would see the sales tax law amended with regard to cloth as to levy it at the place of production and would also include it in excise duty. It was alleged *inter-alia* that a press note of the said speech was published in the issue of the Hindustan Times of 2nd March 1957 under the heading:—

"Pant's assurance to traders"

A copy of the Hindustan Times dated 2nd March 1957 embodying the said promise was enclosed and marked as annexure D. These allegations were specifically amplified in the amended plaint by the addition of a paragraph 19A, wherein it was submitted that the Union Minister for Home Affairs, spoke in support of the

candidature of respondent No. 1 and that this meeting was organized by DPCC at the instance of respondent No. 1 and other Congress candidates in order to enlist support for them. That the Hon'ble Home Minister at the request of respondent No. 1 and his election agent Shri Shiv Charan Gupta with an intent to exercise undue influence over the voters in the interest of the returned candidate in the matter of electoral right of casting their votes made a promise of amending the sales tax law as mentioned in the aforesaid paras of the petition. This paragraph closes with the words that the said promises were made in the interest of respondent No. 1 and they materially affected the result of the election in so far as it concerned the returned candidate. In support of this allegation, Mr. Ram Phal tracing the history of the sales tax law in Delhi in the first instance submitted that by the levy of sales tax in Delhi which is a distributing centre, its trade was very much affected and traders felt dissatisfied by the levy of this tax. The counsel proceeded that the Delhi Vidhan Sabha had become defunct in November 1956 and the Chief Commissioner, Delhi, authorised the enforcement of Bombay Sales Tax in Delhi by a notification which was made on 1st December 1956, whereby the rate of sales tax was increased from Rs. 3/2/- to Rs. 6/4/- with the result that the trading class was heavily hit at the commencement of the year 1957 by the enforcement of the Act. It so happened that the elections started at the same time and naturally some sort of assurance was necessary in order to satisfy the traders for which Shri Pant was approached to give certain assurances to the mercantile community. The counsel asserted that the meeting was arranged by the DPCC at the instance of Shri Brahm Parkash and Shri Brij Mohan, General Secretary and both of them were present at the meeting, which was held at Hauz Qazi on 1st March 1957. It was emphasised that there was no occasion to explain the policy of the Government but it was with an object in view that Shri Pant gave an assurance that the levy will be made at one place and not at multiple points, and that the same shall be merged in the excise duty at the place of production. The learned counsel concluded that in the light of the above, this assurance amounted to interference in the exercise of the electoral right of the voters as contemplated by the provisions of Section 123(1) as well as sub-section 123(1) and the argument precisely was that it was not a declaration of policy but it was a promise which amounted to interference in the free exercise of the electoral right. It was next argued that the speech of Shri Pant also amounted to undue influence as contemplated u/s 123(2). Coming to the evidence, Shri Ram Phal relied upon the statements of Kishen Lal (P.W. 1), Shri Ram Chander Goel (P.W. 12), Bishen Sarup (P.W. 13), Ram Babu (P.W. 16) and Duli Chand (P.W. 18).

51. On the other hand, Shri Chawla, learned counsel for the respondent argued that the meeting at Hauz Qazi was admittedly in support of Shri Radha Kaman another Congress candidate from the City constituency and respondent No. 1, Shri Brahm Parkash had nothing to do with this meeting. Learned counsel proceeded that the agitation about the sales tax was already going on admittedly before the election started and the Home Minister was within his rights to declare the policy of the Government, in order to meet the legitimate grievances of public leaving the people to exercise the right of their vote for any one. It was next argued that sub-section (2) of Section 123 of R.P. Act deals with undue influence which necessarily requires some threat, coercion or duress in case anything said or asked for was not done, and in the absence of any evidence that any threat was given, the provisions u/s 123(2) obviously do not apply. Reliance was placed on VI, ELR, 288 in the matter of 'Linga Gowdu vs. Shiv Nanjappa', a decision of the Election Tribunal, Bangalore, wherein it was held—

"A leader of a political party is entitled to declare to the public a policy of the Government and ask the electorate to vote for his party without interfering with an electoral right and such declaration on his part would not amount to undue influence u/s 123(2) of R.P. Act. The fact that he happened to be a Minister and Chief Minister of State would not deprive him of this right."

Replying to the assertion that it was promised and as such his speech attracts the provisions of Section 123(1) of the Act, Mr. Chawla contended that it was for the petitioner to prove that Shri Pant was doing it with this intent as contemplated u/s 123(1), namely bribery or reward. It was argued that the oral evidence of some witnesses is of general nature and does not prove the gravamen of the charge. Secondly, the evidence is unworthy of any credence.

52. Now on the appreciation of the arguments, the allegation relating to this issue is to be considered from two stand points, namely (1) whether the speech is tantamount to a promise by the Home Minister as contemplated u/s 123(1) of the Act (2) whether the speech amounted to undue influence as contemplated u/s 123(2). In regard to the first, it will be seen that the word 'promise' is

used in the definition of bribery and the object is specified either to induce (a) a person to stand or not to stand or not to withdraw and retire from contest (b) an elector to vote and refrain from voting at an election. The word 'promise' is again used in proviso (b) to Section 123(2) which reads as follows:—

“Declaration of public policy or ‘a promise’ of public action or the mere exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be interfered within the meaning of this clause.”

The word ‘a promise of public action’ is used in this proviso in contra-distinction to the promise to induce an elector to vote. The speech delivered in a public meeting clearly falls within the ambit of the phrase ‘a promise of public action’. Section 123(1) moreover covers cases of bribery when any elector is approached either to vote or refrain from voting etc, and the argument advanced by the petitioner is simply fallacious. The evidence adduced is also of general nature and of the PWs mentioned above who belong to the Jan Sangh party. One of them Shri Ram Chander Goel who is a youngman of 25 years, has deposed on all 9 issues and is a man who was a convenient witness to say any thing and has already been disbelieved. Shri G. B. Pant was summoned by both sides but was dropped and was not examined. It is moreover significant to note that there is not an iota of evidence that respondent No. 1 or his election agent Shri Shiv Charan Gupta had approached Shri Pant as alleged in the amended particulars under para 19A for giving this assurance to the traders. The speech moreover was delivered in the city constituency from where Shri Radha Raman was the candidate. In these circumstances, the requirements of Section 100(1)(b) are not at all satisfied nor any argument was advanced by the petitioner on this aspect of the question. It appears that this part of the allegation embodied in para 19A was made in a reckless manner in order to connect respondent No. 1 or his election agent with the speech, to comply with the order passed by the then member of the Tribunal on preliminary issues on 18th June 1957 to the effect, ‘that the particulars did not connect respondent No. 1’. The petitioner placed in this predicament by the order of the Tribunal could either have given up this allegation or could have said something to connect the respondent with the speech of Mr. Pant and he preferred to resort to the latter course, unmindful of the consequences in flurry. The petitioner happens to be an advocate and it was becoming with his status that he should have acted in a responsible manner of having assured himself as to whether Shri Pant was actually approached by respondent No. 1 or his election agent in order to placate the electorate in favour of respondent No. 1. But he appears to have acted in a rash and careless manner at the time of amendment to bolster up his case. In respect of part (2) whether the speech amounted to undue influence the decision of Election Tribunal, Bangalore reported in VI, ELR, 288 quoted above is a complete answer. Furthermore, in the absence of any evidence of threat or injury, the allegation has no merit. The speech is manifestly covered under Proviso (B) of Section 123(2) of the R.P. Act. In the result the allegations amplified in the amended particulars and set out in para. 19A are not at all proved and the issue No. 2A must fail and the same is decided against the petitioner. Coming to issue No. 2B, whether the result was materially affected, suffice it to say that the issue No. 2 by itself has failed and issue No. 2-B does not arise.

53. Issue No. 3

The allegations in respect of this issue are embodied in paragraphs 19, sub-clause (c) and paragraph 20 of the petition. The corrupt practice alleged to have been committed relates to the Chief Commissioner, Delhi, a Gazetted Officer of the Government of India and was to the effect that on or about 1st March 1957, Shri A. D. Pandit, Chief Commissioner, Delhi, with a view to render assistance and to further the prospects of respondent No. 1's election, ordered the Commissioner of Sales Tax to issue a notification reducing the rate of sales tax from Rs. 6½ per cent to 1 per cent, on jewellery made of gold and silver with effect from 1st March 1957 and a press note embodying the said promise was issued on 4th March 1957, by Shri D. D. Kapila, Sales Tax Commissioner, Delhi. A copy of the press note was attached marked annexure ‘E’. The averments were amplified further at the time of amendment of the particulars by the addition of paragraph 20-A wherein it was stated that the respondent No. 1 and his election agent Shri Shiv Charan Gupta approached the gold and silver ornament jewellers asking them to vote for respondent No. 1 and told them that they would get the sales tax on silver and gold ornaments reduced by the Government. That respondent No. 1 and his election agent Shri Shiv Charan Gupta with this object went to the Hon'ble Home Minister, Shri Pant, in or about the last week of February 1957 and requested him to reduce the sales tax in the interest of his

election. The Hon'ble Home Minister, Shri Pant asked the Chief Commissioner, Delhi, to reduce the rate of sales tax on gold and silver ornaments and accordingly a notification was issued as stated in para. 19(C) and 20 in the original petition. That this has materially affected the result of the election in so far it concerns respondent No. 1. The allegations are more or less on the same lines as discussed in the previous issue relating to Shri Pant and in this case Hon'ble Home Minister is again introduced having been approached by respondent No. 1 and his election agent, Shri Shiv Charan Gupta, to ask the Chief Commissioner to meet the needful. Before entering into the arguments of both sides, I may say at once that on this issue again no evidence was adduced to this effect that respondent No. 1 or his election agent actually approached Shri Pant in this connection. Shri Pant as said above was not examined in the case although summoned by both sides. In this context, in the ultimate analysis and in the absence of any evidence to connect respondent No. 1 or his election agent as required u/s 100(1)(b), the issue must fail, inasmuch as the reasoning given in deciding the issue No. 2 also applies with equal force on the facts of this issue as well. I would however briefly take up the arguments of both sides for whatever worth they are in respect of the allegation. Shri Ram Phal in the course of arguments gave the history of the levy of tax on luxury goods at some length. It was submitted that the rate of tax was uniform i.e. Rs. 3/2/- per cent on certain commodities but Chief Commissioner was given certain powers u/s 3 of the Act to characterise certain commodities to be luxury goods. The rate of tax was accordingly raised to Rs. 6½ per cent on such commodities including gold and silver ornaments. On this some agitation was afoot on behalf of the jewellers in gold and silver ornaments and the Chief Commissioner was vested with powers to reduce or enhance or to prescribe some quantum in the case of certain types of jewellery. The Chief Commissioner however could exercise those powers under certain prescribed rules only with the approval of the Central Government. In the neighbouring states, the rate was less and in Punjab it was 1 per cent. The Chief Commissioner in such circumstances at a material time i.e. at the close of February 1957 reduced the rate to 1 percent in order to bring it at par with Punjab rate and thus rendered assistance in the furtherance of the election of respondent No. 1. The press-note was issued of course on 4th March 1957. Discussing the evidence adduced in support of the allegation reliance was placed upon the testimony of P.W. 8 Shri D. D. Kapila, P.W. 31, Shri Balwant Rai Bansal, P.W. 32, Ram Chand, P.W. 35, Hem Chand, P.W. 39 Shri A. D. Pandit and P.W. 51 Shri Ram Phal petitioner.

54. Shri Chawla, counsel for the respondent, on the other hand arguing in the course of reply on this issue submitted that there was no evidence worth-the-name on the record that the Chief Commissioner acted in the matter of reduction at the instance of Shri Pant, the Hon'ble Home Minister. Reference was made to the statement of Shri A. D. Pandit (P.W. 39) and Shri Kapila (P.W. 8) and it was urged that the statement of these two witnesses are precise as well as detailed as to how the reduction was made and if the date synchronised accidentally near about the date of polling, there was no reason to doubt the veracity of the two gentlemen, who have deposed as petitioner's own witnesses as PWs. The press-note again was issued after the polling i.e. on 4th March 1957 and if the Government wanted to help the Congress or placate the voters it could have done on 1st of March or even earlier. Replying to the arguments of Mr. Ram Phal that the members of the Advisory Committee knew and the information must have leaked out, the learned counsel dismissed it with the remark that there are so many things within the knowledge of the bodies and it cannot be presumed to have been disclosed.

Now the arguments speak by themselves and I need hardly add that P.W. 8 Shri Kapila and P.W. 39 Shri Pandit were examined on the side of the petitioner and their statements are explicit on the subject under discussion. The other oral evidence relied upon is of general nature in respect of agitation of the dealers and does not correlate respondent No. 1 with the reduction inasmuch as there is no evidence to show that the Chief Commissioner, Shri Pandit, acted on the approach of Shri Brahm Parkash. Furthermore, the relief is sought under section 123(1) which is manifestly not applicable. The allegations has no substance and must fail. Issue No. 3-A is, therefore, decided against the petitioner. Issue No. 3-B does not arise in view of the finding given above.

55. Issue No. 4.

The allegations in respect of this issue are embodied in paragraphs 21 and 22 of the petition and the same were amplified at the time of amendment in paragraph 22-A, wherein it was again added that respondent No. 1 and his election agent, Shri Shiv Charan Gupta obtained assistance from Ch. Murari Singh,

a Gazetted Officer, in the furtherance of the prospects of the election of respondent No. 1 by fixing the compensation of land acquired by the Government for the benefit of Dera Ismail Khan Cooperative Society at Rs. 1,200 per bigha as against the usual market value of Rs. 5,000 per bigha and that this assistance given by Ch. Murari Singh materially affected the election in so far it concerned, respondent No. 1. The argument of the petitioner put briefly on this issue was that a cooperative society named D. I. Khan Co-operative Society through their President Shri Bhagwan Dat Wadhwa approached respondent No. 1 who procured the assistance of Ch. Murari Singh for them. The direct evidence in this connection comprises of the statement of Shri Ram Chand (P.W. 32) at page 975 which is to the effect that they had approached respondent No. 1 to enlist his assistance and to get the land on reduced rate and he promised to do so. This witness Ram Chand is a saraf, resident of Lehna Singh Market of Subzimandi. His evidence mostly relates to issue No. 3 in relation to the enhanced rate of tax on gold and silver ornaments and subsequent reduction as discussed in issue No. 3. He has furthermore stated that he was a member of the D. I. Khan House Building Society, at page 936 of the file as below:--

"I am acquainted with the affairs of the Society. Mubarakabad belongs to a firm doing business in Chandni Chowk. One member of the firm is Gulab Chand or Gulab Singh. Many of us went to the kothi of respondent No. 1 and he assured his help in acquiring the land by compulsory acquisition. At the private negotiations between owners and the society through one Govind Ram, did not succeed as the former demanded a high rate of Rs. 4 per yard. Shri Bhagwan Dat Wadhwa, Shri Takhat Ram, L. Ganesh Dass, Master Kishen Chand and myself went to see the respondent in the month of February 1957, last Sunday for the month. He told us that a decision had been taken that the society would get the land at Rs. 1-5-0 per sq. We had already met him twice in the same month on Sundays in this connection. At those meetings he had assured that he would get the land acquired at Rs. 1 per sq. yard. He had told us at the last meeting that he had helped us in making the decision. Shri Bhagwan Dat Wadhwa told them to lend their support to the Congress candidate and it was also decided that a poster be issued in the name of prominent members of the Society having influence over the members appearing to them to vote for the Congress candidate."

In cross-examination, this witness has stated that he had known the petitioner since 1956 and had met him at the shop of Mahavirji Saraf who had engaged Shri Ram Phal, petitioner, as his counsel in a sales tax case. He was not on visiting terms with the petitioner but the petitioner met him after the filing of the petition and asked for help in the petition and that the witness assured him to do so. That the petitioner had not mentioned the allegation made in the petition to him. The manner of help which he was expected to give was also not specified. The petitioner met him for the third time, 4 days back and wanted him to give evidence. That he was a member of RSS before 1946. That he was arrested after the murder of Mahatma Gandhi in the Government action against R.S.S. The witness has further stated in cross-examination that he does not remember when the notification about the land was issued nor can he give even the approximate time or the year. He did not know when the land was surveyed and could not say what rate the owners claimed before the Land Acquisition Collector and the society's offer. That he had not read the agreement nor he had a talk with the owners or any representative himself.

Shri Chawla made a short shrift of the whole argument and placed his reliance on the judgment of the Punjab High Court delivered by Justice Falshaw in which this question has been fully gone into. The operative part of the judgment at page 5 reads as follows:—

"The essence of the argument is thus that in preferring to give the land to the respondent Society for development the Government either acted *malafide* or infringed the principle of equality before the law embodied in Article 14. The main allegation of *malafides* was that the acquisition proceedings had been rushed through earlier in 1957 with an eye on the General Election which were about to take place at that time. In my opinion, there is nothing whatever in this suggestion. The relevant Notifications had been issued in June and October 1955 long before the General Elections were contemplated

and the acquisition proceedings had been going on during the year 1956, the petitioners claim being presented before the Land Acquisition Collector in February 1956. In the circumstances, it would seem to have been high time in January 1957 that the acquisition proceedings should be brought to a conclusion. The general allegations of favouritism also appears to be unfounded in so far as it relates to any particular favouritism shown towards the Society which is the respondent in the present petition, since it is well known that the Government was acquiring land on behalf of other societies founded for the purpose of providing residential accommodation on the cooperative basis. I have already referred to one such case which came before this Court by way of a similar Writ Petition, and I have also dealt with another case concerning land acquired by the Government on behalf of the Cooperative Society responsible for developing the so-called Friends Colony, and to my mind the decision that such acquisitions are of a public purpose settles the question of alleged *mala fides*. As far Article 14 is concerned, an attempt was made to argue that the present petitioners also intended to develop the land as a residential estate on cooperative lines and that therefore there was no justification for taking the land away from them and giving it away to the Society. Out of all the documents produced however there is nothing whatever to show that the petitioners had any intention of developing the land on a cooperative basis except an isolated sentence in the letter, dated 21st August, 1951 to the Improvement Trust in which it was stated that a Colony would be developed on a cooperative basis on the most modern lines and according to the Municipal bye-laws. There is, however, nothing whatever to show that the petitioners had taken any steps whatever to enrol any members or get any cooperative society registered under the appropriate act. There is no suggestion that the petitioners are displaced persons, as the members of the respondent Society must be, and in my opinion there is nothing whatever to show that they intended to develop the land otherwise than as a commercial proposition out of which they expected to make considerable profits on their original investment. Thus if in fact there was any favouritism in taking away the land from the petitioners for development by the respondent Society, it seems to me to be fully justified and in accordance with the general spirit shown by the Government both in legislation and in administrative acts carried out for the benefit of displaced persons as a class."

The learned counsel furthermore relied on the award, a copy of which was placed on the record and contended that the whole procedure was duly gone into as borne out by the award and the proceedings had been going on since 1955. Mr. Chawla also made a reference to the poster Ex. P. 10 referred to in the statement of Ram Chander Goel (P.W. 32) and submitted that the poster was issued on behalf of various societies of refugees and Bhagwan Dut Wadhwa was one of them where he has given his designation, President of the Frontier Central Refugee Sabha, Delhi, and not as President of the D. I. Khan Society. Mr. Chawla also referred to the statement of respondent No. 1 and submitted that respondent No. 1 was very frank to admit that Society people approached him for acquisition of land in his capacity as Minister. He however did not remember the names of the persons who came to him but Wadhwa was one of them. That as a Minister his policy was to help all the cooperative societies of Delhi in the acquisition of land and in pursuance of that he advised the revenue authorities to acquire land for such societies. But he did not meddle in the matter of rates, as that rested with the Land Acquisition authorities.

57. Now the point in dispute requires no elaboration inasmuch as the Judgment of the Punjab High Court clinches the issue wherein a specific finding has been given and it is binding on this Tribunal. The deposition of Ram Chand (P.W. 32) is on the face of it incredible as revealed in the cross-examination that he was approached by the petitioner to help him and the witness presumably appears to have stated extravagantly in his deposition in order to connect respondent No. 1, with the assistance. In point of fact according to the judgment of the Punjab High Court, no concession or any assistance was forthcoming. The allegation has no merit and the issue must fail. Issue No. 4-A accordingly is decided against the petitioner.

Issue 4-B does not arise in view of the finding given above.

58. Issues 5 and 9.

The allegations regarding this issue are contained in paras. 23 and 23A and relate to the making of payment to certain voters who brought back the ballot papers without casting them at places mentioned in para. 23A for the purpose of putting these ballot papers again through trusted persons of respondent No. 1. The allegation is one of bribery that some of the ballot papers were purchased for putting the same again through trusted persons in the ballot boxes. The allegation in the other issue No. 9 embodied in paras. 28 and 28-A of the petition also is on the point of bribery that money was paid to the voters for casting their votes. Both the issues can be conveniently taken up together because the evidence in support of these two issues is the same, namely the deposition of P.W. 22, P.W. 23 and P.W. 25. Now P.W. 22, Shri Govind Ram Verma stated that voters of his locality had told him that they had nothing to do with Jan Sangh or Congress and would vote for the candidate who would pay them money. That Shri Shiv Charan Gupta and Shri Amar Nath Chawla went to the Basti Bagarian and stayed there for half an hour. As soon as they came back voters in large groups began to come to the polling station. In cross-examination, he admits that he has been connected with Jan Sangh since its inception. That he had prepared the list of voters for whose support for Jan Sangh they could count. The list was not preserved after the election was over. Then he destroyed the list 2/3 days after the counting was over. That he was elected Municipal Commissioner on Jan Sangh ticket. It will be seen that this witness does not say any thing on issue No. 5 about the purchase of votes which were returned for re-deposit through trusted persons and on issue No. 9 his testimony is vague and not worthy of any trust on the face of it. He does not say any thing that any money was paid in his presence; and appears to have deposed in a partisan spirit inasmuch as he was elected on Jan Sangh ticket. Krishen Lal (P.W. 23) has stated that he was the polling agent for respondent No. 2. When he came out of the polling station, workers who met him told him that the voters had been bribed. He did not see any bribe passing. This evidence is of no avail on issue No. 5 in respect of the purchased ballot papers and with regard to issue No. 9, does not prove any thing because the evidence is of hearsay nature. P.W. 25, Parbhati Lal who is a Municipal Commissioner from Basti Julahan, Municipal constituency No. 34 admits that he was working for respondent No. 2 during the last parliamentary elections and stated that he stood on Jan Singh ticket in 1951 and lost to the Congress candidate. He again stood for Delhi Assembly on Jan Sangh ticket in 1952 and lost it and the Congress candidate succeeded. On the allegations relating to issue Nos. 5 and 9, this witness has stated as below:—

"On the polling day at 3 P.M. in galli No. 11 and Pahari Dhiraj, I saw Shiv Charan Gupta distributing money to the voters. The residents of that galli carry on many professions as poultry business in winter and khas ki chick manufacture in summer. With him were Mr. Amar Nath Chawla and one more person whose name I do not know."

"I cannot tell the names of the voters whom money was paid. The voters who received the money made a similar demand from me but I expressed my inability. I did not see Shri Shiv Charan Gupta in my constituency or the area in which I worked before the polling day."

In cross-examination, this witness has further stated that he knew that bribery was an election offence and when he saw bribery being paid, he brought it to the notice of the police which expressed its helplessness, but he did not submit any written report to any authority. He of course informed respondent No. 2 but could not say whether respondent No. 2 made any complaint about the mal-practices. The Election Officers were present in the polling booths. He did not bring the matter to the notice of any such officer. This witness again does not say any thing about issue No. 5 regarding the purchase of ballot papers and his evidence on issue No. 9 is that money was paid in his presence by Shiv Charan Gupta. Shri Shiv Charan Gupta in his deposition has emphatically denied having gone in that Basti on the polling day. The matter as admitted by the witness was not reported to the polling officers who were present or any written complaint made. The assertion of this witness has not been corroborated by any other witness and owing to the partisan nature of his deposition no finding can be given on the sole testimony of this witness about bribery which is to be proved by cogent and satisfactory evidence. There is yet another piece of evidence brought on the record regarding issue No. 5 and that is the statement of P.W. 3, Shri Hans Raj, Chief Electoral Officer to which the petitioner did not refer. This explains the whole position regarding the two ballot papers mixed up at the time of

counting. In the light of the statement of P.W. 3 the allegation is devoid of any substance. Both the issues accordingly fail and are negatived.

Issue 5-B does not arise in view of the finding given above.

59. *Issue No. 6.*

The allegations about this issue are embodied in paragraph 24 which remained intact and was not amplified even at the time of amendment. In the first part of para. 24 in general, it was stated that respondent No. 1 or his agent or any person on his behalf procured the assistance in the furtherance of the prospects of election from persons in the service of Government and amongst others the following particulars are set out. The second part of this paragraph relates to Shri Gopi Nath Aman who was mentioned to have canvassed and persuaded the voters to cast their votes in favour of respondent No. 1. For facility of reference, this paragraph which is a short one is reproduced below:—

“That Shri Gopi Nath Aman who is the Chairman of the Public Relations Committee of the Delhi Administration and as such as a Government servant, canvassed and persuaded voters to cast their votes in favour of respondent No. 1 and that as such the said respondent No. 1 obtained and procured the services of said Government servant in the furtherance of his election prospects and as such it was detrimental to the interest of respondent No. 2, and that amongst others said Gopi Nath Aman on 24th February 1957 unduly influenced the voters of Faiz Ganj and Tokriwala, Patri Nahar of the said constituency.”

The above is the allegation in all which attracted good deal of evidence by both sides. The petitioner examined about a score of witnesses who deposed that Gopi Nath Aman participated in a procession which was taken out on 24th February 1957 (Sunday) and in the course of the procession he went into the lanes or otherwise came in contact with persons to whom he canvassed for giving votes to respondent No. 1. The respondent also examined about equal number of witnesses from this area, namely Faiz Ganj and Teliwara, etc., who deposed that no big procession was taken out and processions generally taken out on Sunday or on holidays were of small groups and that Gopi Nath Aman was never seen in any of the processions. The evidence of these witnesses is of negative nature to the effect that Shri Aman was not seen in that area and had not joined any procession. On the other hand, the witnesses examined by the petitioner have positively stated that they had seen Shri Gopi Nath Aman in the procession and some of them have stated also that he was seen canvassing voters for the purpose of vote-catching. The other aspect of the question is as to whether Gopi Nath Aman can be treated as Government servant for the purpose of Section 123(7) of the Act. In this perspective there are three points to be dealt with, namely (1) whether Shri Gopi Nath Aman is a Government servant as contemplated under Section 123(7) of the Act, (2) whether he had actually joined a procession taken out on Sunday, the 24th February 1957, and its effect and (3) whether he canvassed for respondent No. 1 for the purpose of catching votes for him.

60. Shri Ram Phal arguing on this issue submitted that Shri Gopi Nath Aman is a gazetted officer as deposed by Shri A. D. Pandit (P.W. 39) and as such he can be treated as a Government servant because gazetted officers are mentioned in the categories of the persons specified as Government servants for the purpose of Section 123(7) of the Act. It was further argued that he was whole time employee of the Central Government and he is being paid Rs. 1,000 (fixed) from the consolidated funds of the Central Government as deposed by P.W. 39, who also stated that some powers of the Chief Commissioner have also been delegated to Shri Gopi Nath Aman. The counsel maintained that the statement of Shri A. D. Pandit (P.W. 39) is conclusive on the point that Shri Gopi Nath Aman is a Government servant. Mr. Ram Phal also made specific reference to the statements of P.Ws. 9, 12, 19, 20, 29, 40, 42, etc., and submitted that no less than 17 witnesses have deposed that Shri Aman had participated in the procession. It was further argued that some of the witnesses have also named persons whom Shri Gopi Nath Aman canvassed in the course of procession. Lastly, it was submitted that the participation of Shri Gopi Nath Aman in the procession as well as canvassing was proved by positive evidence and that by itself proved that the assistance was procured and obtained by respondent No. 2 in whose interest he worked.

61. On the other hand, Mr. Chawla learned counsel for respondent No. 1 invited the attention of the Tribunal to paragraph 24 itself and pointed out that

so far the obtaining and procuring the services of Shri Gopi Nath Aman was concerned, it did not form the basis of any allegation, and was left as a matter of inference. The argument was reinforced that the words 'and as such respondent No. 1 procured the services of Gopi Nath Aman' clearly show that the petitioner has inferred by the activities of Shri Gopi Nath Aman that his services were procured and obtained otherwise the allegation was not in fact made at all or was proved by any evidence brought on the record. The learned counsel urged that the procuring and obtaining of the services of Government servant is the gravamen of the charge and it is wanting in the allegation itself. The other draw back in the allegation according to Mr. Chawla was that the participation in any procession was no where mentioned in the petition at all and the whole evidence on this point was a got-up and false evidence produced on party lines and as such the witnesses were prepared to come forward for Jan Sangh and to depose any thing they were asked for to do. The learned counsel urged that so far the allegation of undue influence was concerned, in the absence of any evidence of personal injury, threat or dispcasure, it was simply untenable and frivolous. Regarding any assistance given by a Government servant, Mr. Chawla argued that the oral evidence produced by the petitioner was of no evidential value because the witnesses deposed on a point which was not at all mentioned in the petition, namely 'participation in procession' and the other evidence of canvassing was again incredible inasmuch as it was futile to suggest that in the course of the procession Gopi Nath Aman (who was stated to be in front) was talking about for the purpose of catching votes or went into the lanes for that purpose leaving the procession. The learned counsel maintained that the story by itself is concocted one and its face value is not worthy of any credence. Lastly, it was urged that 24th February 1957 was a Sunday and it appears that the petitioner utilized this date for the reason that Gopi Nath Aman could have been free on that date, a closing day. Mr. Chawla also referred to the depositions of the various witnesses relied upon by the petitioner and while taking the Tribunal into their evidence pointed out that every one of them was in the Jan Sangh party and as such their evidence was of tainted nature. It was also pointed out that the evidence was discrepant because some of the P.W.s have stated that the procession taken out on Sunday, the 24th of February, comprised over 50 to 60 persons while others gave the number to be 500 to 700. Specific reference was made to P.W. 44 who has stated that Shri Aman had gone to him four times to canvass him. Mr. Chawla contended that this witness was not in the list of witnesses at all and was brought of his own accord and the nature of the evidence that he was approached 4 times by itself shows the absurdity of his evidence. On the crucial point whether Gopi Nath Aman is a Government servant for the purpose of Section 123(7) of the Act, Mr. Chawla argued that the test laid down is as to whether the Government has any control over the duties and the functions that one is discharging. Reliance was placed on IX, ELR, 451 in the matter of Nihal Chand Vir Chand Seth vs. V. R. Patel, decision of the Election Tribunal, Bombay and VII, ELR, 374 in the matter of Mehta Goverdhan Lal Girdhari Lal vs. C. A. Dalumiyar, also a decision of the Bombay Tribunal. In the latter case regarding Mehta Goverdhan Lal, the Tribunal held that

"The non-official secretary of a District Development Board of the Government of Bombay holds an office of profit but he does not hold an office under the Government of Bombay, as there is no relationship of master and servant between him and the Government. Mere power of appointment and dismissal and payment of honorarium from the Government Treasury and general supervision and control cannot make a person a servant of the Government, if he has not agreed to be subjected at all times to the orders and directions of the Government not only with regard to the nature of the work and also in the manner of doing it."

In the other case Nihal Chand Vir Chand Seth, it was also held that

"The mere fact that a person may be getting an honorarium from the State or may be paid travelling allowance by the State or that the appointing authority is the State or his services are liable to be terminated by the State are not conclusive on the question whether he is serving the State or not. These are the facts that may be taken into consideration but the real test is the right of control, the manner in which that person does his work. A non-official secretary of District Rural Development Board in the State of Bombay is not a person serving the Government although he may hold an office of profit under the Government, and obtaining the assistance of such a person would not, therefore, amount to a corrupt practice under Section 123(8)."

62. No authority on the contrary was cited at the bar on the side of the petitioner and I too have not been able to lay my hand on any authority where this question was discussed. A decision in Miscellaneous Appeal No. 2 of 1958 has recently been published in Government of India Gazette Extraordinary on September 6, 1958 in the matter of Shri Y. S. Parmar vs. Shri Hira Singh Pal and others. In this case, the election of the returned candidate Shri Parmar was challenged on the plea that he had procured the services of one Amar Singh, a member of the Armed Forces (appointing him as polling agent of Sheopur No. 13 on 25-5-57) as well as some other persons including Shri Pratap Singh Kairon, Chief Minister of Punjab, Shri M. M. Shah and Shri Abid Ali, Labour Deputy Minister. The learned Judicial Commissioner, Himachal Pradesh found that the evidence in the case of others was not believable and the plea was rejected for want of evidence of having procured and obtained the assistance of Government servants in connection with election. Regarding the appointment of Amar Singh as polling agent, the learned Judicial Commissioner however held that under the amended Act of 1956 in per-view of the explanation, namely 'a person shall be deemed to assist in the furtherance for the purpose of candidate's election if he acts as election agent or a polling agent or a counting agent of that candidate', Shri Parmar procured and obtained the services of a Government servant by appointing Amar Singh as his polling agent. Hence the assistance by Amar Singh was found within the mischief of the provisions of Section 123(7). The case of Amar Singh who was a member of the Armed Forces and had acted as a polling agent, is obviously distinguishable. In the instant case, it is to be seen whether Gopi Nath Aman satisfies the definition of a Government servant as contemplated under Section 123(7) of the Act and furthermore whether his services were procured and obtained and he actually rendered assistance by canvassing for respondent No. 1. On the first point, namely whether Shri Aman is a Government servant, the evidence of Shri A. D. Pandit (P.W. 39) is of course very relevant. Shri Pandit has stated in this connection as below:—

"Shri Gopi Nath Aman has been the Chairman of the Public Relations Committee since December, 1957. Government of India appointed Shri Gopi Nath Aman and the Government of India alone can remove him from the post. He is being paid Rs. 1,000 as salary per month from the consolidated fund of the Union of India. He is a full time employee of the Government of India. He presides over a committee which is intended to advise the Government on matters of public relations generally. His appointment was by notification No. F. 17/21/56A, dated 11th December 1956. The notification must have been published in the Government Gazette."

In cross-examination of course, Mr. Pandit has stated that Public Relations Committee is founded to act as a liaison between Government and public and all shades of opinion are represented in the Public Relations Committee. The members of the Committee are not paid except those who are Government servants and members *ex-officio*. Mr. Aman's appointment was not made under any statute or rules. That he had seen reports relating to his attending Congress meetings. He did not take any objection on behalf of the Delhi Administration. He is a Government servant as he draws salary from the Government Treasury. Mr. Pandit has further stated in cross-examination that orders of appointment of Government servants do not specify what he is supposed to do or not to do and that he considered him as Government servant because he draws salary from the funds of the Government, and is a whole-time employee.

63. Now the reasons given in the statement of Shri A. D. Pandit are fully explained in the authorities cited above, namely appointment, drawing of honorarium removal, etc. These terms however did not constitute any one to be a Government servant for the purpose of Section 123(7) of the Act which was 123(8) in the old Act. The test laid down is whether the Government has any control over the person and that what is the nature of his work. In the two Bombay cases referred to above, the person concerned were Secretary of the District Rural Development Board and Honorary Secretary of the District Development Board. While in this case, Mr. Aman is the Chairman of the Public Relations Committee. Rural Development Board appears to be working for the uplift of the rural area for the furtherance of a certain scheme as observed by the Tribunal at page 464 in Nihal Chand's case. In this case, the appointment of Mr. Aman appears to be under a scheme in order to contact the public for understanding their grievances, as a liaison between Government and public. The nature of their work and their functions have nowhere been specified. In view of these circumstances, the analogy with the Honorary Secretary and the Secretary of the Rural Development Board is almost complete. I, therefore,

feel inclined to hold that Shri Aman cannot be treated as a Government servant for the purpose of Section 123(7) of the Act. This is a different matter that he is a gazetted officer and his appointment is notified in the gazette but the expression 'gazetted officer' is very often used and is no where defined. In the Secretariat appointments, postings and transfers of certain officers are notified in the gazette. There are however many other kinds of functionary whose appointments are gazetted and they will not be treated as gazetted officers if they are not in the service of the Government. Thus to apply the clause regard shall have to be made as to what were their duties in the service of the Government. In this case, the duty of Shri Aman is to approach the public, find out their grievance and work as a liaison officer between Government and public. He is more a servant of the public as he has to find out their grievances and place them before the Government and the control of the Government on his duties and the scheme under which he is working is not specified inasmuch as the work for the redress of public grievances must vary from time to time. Judged in this context, I am of the opinion that Mr. Aman does not satisfy the conditions laid down under Section 123(7) and cannot be treated as a Government servant. I however felt and had called upon Mr. Chawla also to explain as to why Shri Aman was not examined when he was served out Mr. Chawla submitted that in his view he was not a necessary witness and had been dropped. The counsel submitted that the decision was to be arrived at on the evidence brought on the record and his evidence could not have improved in any manner on the deposition of the Chief Commissioner, Shri A. D. Pandit. My view was that Mr. Aman should have rather welcomed the opportunity of having come forward and to depose on the allegations made against him but he did not appear and the Tribunal did not deem it necessary to call him as a court witness for reasons already described while dealing with issue No. 1. With regard to the evidence adduced by the petitioner, that Shri Aman had canvassed for respondent No. 1, I have no hesitation in coming to the conclusion that the evidence although positive is not worthy of any credence. The impression left on my mind on going through this mass of evidence is that the itch of party power and the lure of political gain has cramped the soul of the people and the people are not wanting who can be used as a convenient witness to support their party and as such it is out of anguish and not of anger that I say that the record in regard to oral evidence is rather a stinking mess. The defence evidence is of negative character of course and is of no consequence, but the witnesses examined by the petitioner on this issue curiously enough depose about the participation of Gopi Nath Aman in a procession to which no reference was made in the particulars given in the petition. Regarding the oral evidence of undue influence having been exercised by Shri Aman on the voters, it is also superfluous in the light of the order passed by the then learned Member of the Tribunal at the time of disposing of the preliminary issues and allowing an opportunity for amendment. The operative part of this order reads as follows:—

"The corrupt practice of undue influence committed by Shri Gopi Nath Aman cannot however be allowed to be pleaded as an independent and distinct corrupt practice because no where the connection of Gopi Nath Aman with respondent No. 1 has been shown. Undue influence on voters by him, is certainly mentioned as the assistance rendered by him and was objectionable because he was a Government servant. The exercise of undue influence by him as a person apart from that capacity and thus affecting the election of respondent No. 1 is neither pleaded as such nor the particulars appear. At the time of framing of issues and at the time of leading of evidence it shall be taken as a ruling of the Tribunal that the petitioner has not pleaded undue influence on voters by Shri Gopi Nath Aman as a distinct corrupt practice affecting the election but it shall be taken only as specification of assistance which the Government servant rendered and which respondent No. 1 procured."

In the light of this ruling already given by Tribunal the question of undue influence having been exercised on the voters by Shri Aman as deposed by several P.W.s is of no avail. In regard to the allegation that he rendered any assistance in his capacity as Government servant, Shri Aman as held above does not satisfy the conditions of a Government servant as contemplated under Section 123(7). And furthermore, it was not alleged that his services were procured and obtained by respondent No. 1, in his capacity as Government servant much less proved by any evidence on the record. In para. 24 of the petition referred to in the beginning, it was alleged that "as such the said respondent No. 1 procured and obtained the services of the said Government

servant". It was inferred only although the procuring of services is the first essential element of the charge in relation to corrupt practice under the provisions of Section 123(7) of the R.P. Act. In the result, the issue fails on both counts and is decided against the petitioner.

64. Issue No. 7.

It relates to the infringement of rules 18(2) and 56(iii)(d) of the Electoral Rules (for the conduct of Election and Election Petitions). The allegations in this respect as embodied in paragraphs 25 and 26 are to the effect that the ballot boxes of polling station No. 20 situate at M.B. Primary School, Sohan Ganj, house No. XII/1799, polling station No. 37 M.B. School, Basti Panjabian, Subj-
mandi, Delhi, house No. XII/2495 and polling station No. 48 situate at Rajwar Shiksha Niketan, house No. XII/5212, Kohla Puri Road, Jawahar Nagar were found to be defective inasmuch as they could be opened without breaking the green seals of the said ballot boxes and as such by virtue of the position of these defective boxes, penalty was incurred under the aforesaid rules, namely non-compliance with the rules as contemplated under Section 100(1)(d)(3) of the R.P. Act. The petitioner arguing in support of the allegations contended that the mechanism of the boxes was defective and they could be opened without breaking the green paper seals. Reliance was placed on the evidence of Shri Kidar Nath Sahni (P.W. 40) and Shri Shyama Charan Gupta (P.W. 52). According to the statement of these witnesses, on 6th March 1957 in the night respondent No. 2 telephoned Mr. Hans Raj, Chief Electoral Officer and requested for an interview and expressed apprehension regarding the tampering of ballot boxes. The Chief Electoral Officer on the following day made an enquiry in the presence of Shri Laxmi Narain, Returning Officer and when the boxes regarding Polling Station No. 20 were opened, it was found that one of the boxes relating to respondent No. 2 could be opened without breaking the green paper seal. Respondent No. 2 and his election agent accordingly renewed the complaint and asked for an opportunity for examining other boxes as well but Ch. Laxmi Narain was annoyed and blamed them for having touched the boxes and spoiled its mechanism. A complaint was accordingly made to the Chief Electoral Officer in writing whereupon due enquiry was made pertaining to the boxes relating to polling station No. 48.

65. Mr. Chawla in reply referred to the statement of the Chief Electoral Officer, Shri Hans Raj (P.W. 3) and maintained that according to his statement Shri Shyama Charan Gupta, respondent No. 2 got more votes at polling station No. 37 than Shri Brahm Parkash and in the absence of any evidence on the point that there was tampering as said in para. 28 the grievance has no foundation. It was also argued that Shri Hans Raj has definitely stated that respondent No. 2 or his companions did not complain that the boxes of polling station No. 37 had been tampered with and the mechanism if at all found defective was of no consequence because the seal of the bag and other particulars were found quite intact. And even if the green paper seal was defective in any way, it did not amount to tampering which was not possible. Mr. Chawla concluded that at any rate, non-compliance of rules was not proved, because in Rule 18(2) the word 'or' is disjunctive and if one of the two is found intact the condition was satisfied. Now Rule 18(2) reads as follows:—

"It shall be so constructed that a ballot paper can be inserted therein during the poll only but cannot be withdrawn therefrom without the lock unlocked or the seals being broken."

66. Now Shri Hans Raj, Chief Electoral Officer (P.W. 3) has explained the whole position in details and it is desirable to reproduce the relevant portions as below which are self-explanatory:—

"Respondent No. 2 along with his election agents Shri Kidar Nath and Shri Misra, Advocates came to my residence on the morning of 7th March at about 7. Respondent No. 2 and his election agents told me that the ballot boxes from polling station No. 37 and a few other ballot boxes could be opened without breaking their paper seals. I told him that I would be present when ballot boxes from polling station No. 37 would be opened for count to check this up and that regarding any other ballot boxes which could be opened without breaking paper seals they may also be brought to my notice during the count. When the ballot boxes from polling station No. 37 were taken out of the gunny bag in which they had been sealed for transit from the polling station to the place of custody, I got them distributed amongst the counting assistants in my presence. The seals on the gunny bags were intact. The twines that secured

the buttons of the ballot boxes with the window covers were intact, along with the official seals on the twines which were also intact. The seals twines were broken in my presence. The button could not move and the boxes could not be opened as long as the twines and the seals securing the buttons with the window covers were intact. After breaking of the twines and the seals the buttons of the boxes could be moved so as to open the boxes without operating from the window the spring wires because, as it was found, on opening the boxes, the spring wires had been removed, and they were missing. Had the spring wires been there, the buttons could be operated only through the windows after breaking the paper seals. In the case of polling station No. 37, the necessity to break the paper seals covering the window did not arise. One ballot box was allotted at each polling station to each candidate. Respondent No. 2 reported to me and the Returning Officer that his box from polling station No. 20 had been opened by his election agent after the twine and the seal securing the buttons with the window covers were intact, the button not be moved for opening the box. What I have said regarding ballot boxes from polling station No. 37 equally applies to this ballot box. The seals on the gunny bag out of which ballot boxes of polling station No. 20 were taken, were also reported to be intact.

It is true that the ballot boxes from polling station No. 37 and one ballot box from polling station No. 20 could be opened without breaking the paper seals but not without breaking the twines, the sealing wax securing the same and the removal of the steel wire securing the buttons with the window cover, which I have already said were intact. Sealing seal was of red colour and the seal affixed thereon was the official seal supplied by Election Department to the Presiding Officers of the Polling Stations. This seal secured the twines. The final result sheet of polling station No. 37 is as under as regards respondent No. 1 and:—

- | | |
|------------------------|--------|
| (1) Shri Brahm Parkash | .. 283 |
| (2) Shri Shyama Charan | .. 329 |

The total number of votes polled at polling station No. 37 was 634. Shri Tribhawan Dutt got five votes, Shrimati Gurcharan Kaur six, Shri Hukam Chand eight, and Sodhi Pindi Dass three. Two ballot papers issued from polling station No. 37 as was evident from the polling station No. 37 seal mark thereon, were found at the time of count of polling station No. 61 mixed up with 198 votes of the respondent No. 1 from polling station No. 61, and this was reported by Shri Brahm Parkash's counting agent, who had initially reported after the count of all the votes from polling station No. 61 that the total number of votes polled by all the candidates exceeded the number of ballot papers issued at polling station No. 61 by two. We were distributing boxes of 24 polling stations at a time. The seats at which ballot boxes from polling station No. 61 were opened were the same at which just preceding these ballot boxes, the ballot boxes from polling station No. 37 had been opened. It may be that during the excitement caused when ballot boxes from polling station No. 37 were found to open without breaking the paper seals, these two ballot papers were left over inadvertently by any of the counting assistants in that row and the same may have been taken up by the counting assistant at the table assigned to Ch. Brahm Parkash and mixed up with the ballot papers taken out of his box from polling station No. 61. These two ballot papers were rejected. In all cases where ballot papers issued from one polling station were found in the ballot box of another polling station, they were rejected."

In the light of the detailed quotations from the statement of Shri Hans Raj, Chief Electoral Officer, it is not worthwhile to elaborate the point any further. It appears that tampering of the boxes was not possible and the position of the green paper seals by some inadvertence remained as such that the boxes could be opened without breaking this. In the first place, as the position stands, there has been no infringement of rules because there was no defect in the mechanism but the wire connecting the green paper seals remained in such a position that the boxes could be opened. In the alternate if at all technically, it amounted to non-compliance, the position as explained above shows that respondent

No. 2 got more votes so far these boxes were concerned as compared to respondent No. 1 and it cannot be said with any stretch of imagination that the result was materially affected as required under Section 100(1)(d)(3). There is no substance in the contention and the issue must fail. The same is negatived.

66. Issue No. 8.

This issue relates to corrupt practices alleged to have been committed by giving out threats of injury to the voters on some places in the constituency and as such having exercised undue influence on the voters. More than one persons were alleged to have been responsible for this as detailed in the issues 8A to E but no evidence was led and Mr. Ram Phal, the petitioner, did not press this issue. The same is accordingly decided against the petitioner.

67. This disposes of all the 9 issues and the result of the findings is that the petitioner has failed to prove that any corrupt practices were indulged or committed by respondent No. 1 or by his election agent or by any person with the consent of the respondent No. 1 or the election agent or any person in the interest of the respondent which can justify the Tribunal to set aside the election of respondent No. 1, Shri Brahm Parkash, the returned candidate. The petition accordingly fails and should be dismissed with costs. The notices issued to Brij Mohan, Om Parkash Jain and Om Parkash Sharma under Section 99 of the R.P. Act are vacated *ipso facto*.

68. On the question of assessment of costs, however, it is important to note that the proceedings continued for about 1½ years and the contest was not only protracted but strenuous as well. The respondent's counsel has filed a certificate of fees in the amount of Rs. 2,200, but I am not prepared to mulct the petitioner with all that amount. Taking all circumstances into consideration, it is ordered that the petitioner shall pay to respondent No. 1, Shri Brahm Parkash Rs. 1,100 (Rs. one thousand and one hundred) only as costs which may be recovered from the security of Rs. 1,000 lying with the Election Commission and the rest will be recoverable according to the rules from the petitioner by respondent No. 1. All other respondents including the newly added respondents Nos. 7, 8 and 9 (Brij Mohan, Om Parkash Jain and Om Parkash Sharma), as well as the petitioner shall bear their own costs.

KARTAR SINGH CAMPBELLPURI,

Member,

Election Tribunal, Delhi.

Announced.

DELHI;

The 11th December, 1958.

APPENDIX 'I'

Shri Ram Phal

Versus

Shri Brahm Parkash etc.

ORDER.

1. On the pleadings of the parties with particular reference to the preliminary objections raised by respondent No. 1 in his written statement the following issues were framed

- (1) Did not the Election Commission satisfy the conditions of section 86, R.P.A., 1951 before referring the petition to the Tribunal for trial? If so, what is its effect on the Tribunal's competency to proceed with the petition?
- (2) Is the petition barred by time?
- (3) Are full particulars of the alleged corrupt practices given in the petition? If not what should be the proper order?
- (4) Are the respondents entitled to copies of the annexures to the petition mentioned as schedules in the petition?
- (5) Have the annexures been properly verified? If not, what is its effect?

2. The parties were given an opportunity of producing evidence. Only certain documents were tendered and admitted by the opposite party. No other evidence was led. I have heard arguments on these issues. I proceed to record my findings with a brief statement of reasons in their support.

3. *Issue No. 1*—Section 86, R.P.A., 1951 requires that the Election Commission shall cause a copy of the petition to be published in the Gazette and a copy to be served by post on each respondent, and shall then refer the petition to an Election Tribunal for trial. Actually happened in this case is that the petitioner's name was omitted in the published copy also the date of the petition was printed as 29th April instead of 20th April, the correct date. The notification refers to the presentation of the petition. The date of its presentation and the name of the person, who presented it are given. At the end of the petition appears the name of the petitioner. Ram Phal is the petitioner. His name appears in the opening paragraph of the Gazette Notification, so also it appears at the end of the petition. It is left out in the title of the petition.

4. It was argued that these mistakes in the publication of the copy vitiate the reference of the petition for trial to the Election Tribunal. It was argued that the section uses the word 'shall' which is ordinarily taken as mandatory unless there is any thing in the context to show the contrary. That question does not in fact arise and I will not enter into its discussion. What has actually happened is that the copy was actually published with two errors which crept into the printed copy. It is not a question of complying with section 86. The Election Commission purported to comply with it. Can it be said that there has been such a failure to comply with the section as to hold that in fact there has been no compliance? I am of opinion, that the proper test is to see whether the mistakes in the published copy are such as to fundamentally alter the character of the petition itself and to lead a person who reads it to an impression that it is not a petition which was presented by Mr. Ram Phal to the Election Commission against Shri Brahm Prakash and others. If the requirements of the section are enforced literally it would mean that the substitution of the word 'the' instead of the word 'a' or the addition of ',' or semi-colon will make republication of the copy necessary to validate the reference. I differ from this literal construction. What the law requires is that the copy should be published and if it can be fairly and reasonably taken to be a copy of the petition notwithstanding errors in the publication, there is sufficient compliance.

5. The copy served on respondent No. 1 showed the date of the petition as 29th April. Verification, however, showed 20th April. Actually the petition received by the Tribunal is also dated 20th April. That in my opinion is not a material mistake. It might have given the respondent an impression that the petition is marred by time. As a matter of fact the respondent's counsel acted on that impression and raised an objections to limitation. The actual notice with which the copy was served, however, clearly mentioned that the petition had been presented on 20th April. Thus there is no scope for any wrong impression being conveyed to respondent No. 1.

6. The petition refers to certain schedules and annexures. The latter were not published as a part of the petition. It was argued that they in fact formed an integral part thereof and should have been published. I have read through the petition. Para 6 refers to the schedules or annexures. But the petitioner has taken care to make the petition an independent document. The annexures only refer to the actual evidence. Every schedule or annexure is not to be taken as a part of the petition. It depends how far a reference of their contents is necessary to make the petition a complete whole. The present petition satisfies these tests. Omission to publish the annexures under Section 86 or to serve them on the respondents is not fatal to the reference. I decide issue No. 1 in favour of the petitioner.

7. *Issue No. 2*.—It was conceded that it is not the date which the petition purports to bear but it is the date on which it is actually presented to the Election Commission, that determines the point. It was conceded that the petition was actually presented on 20th April within the period of limitation fixed by the Act. I decide this issue against respondent No. 1.

8. *Issue No. 3*.—Particulars of corrupt practices purport to have been given from paragraph 8 onwards. Paras 1 to 4 are introductory. Paras 5 to 6 are quite general in their language and scope. They do not claim to give the particulars of corrupt practices. Para 7 relates to the commission of a corrupt practice, what is generally called publication of false and defamatory statements about the petitioner. Para 7 generally states about the corrupt practices, Para 8 points out in what manner the publication which was contained in a poster was objectionable. Para 9 purports to give how and in what manner it was intended to prejudice the prospects of respondent No. 2, another candidate. Para 10 purports to give that the falsity of the statement was to the knowledge of respondent No. 1. Para 11 refers to the publication of similar matter in posters issued

in Persian script. Para 12 mentions that the order for printing the said posters was given by the Delhi Pradesh Congress Committee, Delhi, to which the bill was sent. It is also mentioned that respondent No. 1 is the Vice President of the Congress Committee. Para 13 states that such posters were prominently displayed in thousands in the whole of the Delhi Sadar constituency and have affected the fortunes of the election campaign against respondent No. 2 to the advantage of respondent No. 1. These paras from 8 to 13 relate to one corrupt practice. Para 15 relates to the issue of another poster by a body known as Anti Communal Front body in Devnagri and Urdu script. The allegation is that it constituted a false and defamatory statement amounting to corrupt practice. Paras 16, 17, 18 and 19 alleged that a speech delivered by Shri Govind Balabh Pant, the Hon'ble Minister for Home Affairs, Central Government on 1st March, 1957 in the course of which he promised certain concessions in the matter of sales tax law to the commercial community of Delhi in general and the trade of the constituency in particular amounted to undue influence exercised by the Hon'ble Minister. Para 19(c) and para 20 relate to a reduction of sales tax under the orders of the Chief Commissioner by the Sales Tax Commissioner at or about the time of the polling day. Para 21 relates to the amount of compensation which Ch. Murari Singh, Land Acquisition Collector promised to award in respect of certain land taken from a firm Messrs Gulab Singh Johari Mal for the benefit of Dohra Ismail Khan Cooperative Society Ltd. It is alleged that the aforesaid corrupt practice was committed by the said Government Officer to assist respondent No. 1. Para 23 deals with allegation of bribery to voters. Para 24 relates to the obtaining of assistance from a Government servant. Paras 25 and 26 deal with the defective character of ballot boxes at certain stations. Para 27 deals with the allegation of undue influence in the form of threats. Para 28 refers to illegal gratification.

9. I have described all the allegations of corrupt practices made in the petition at one place without entering into individual consideration for one reason. All of them suffer from one defect. The person who committed the corrupt practice, the connection of that person with respondent No. 1 and the effect of that connection on the validity of the election have not been specified. Section 123 defines corrupt practices. A corrupt practice may be committed by a candidate or his agent or by any other person. In that an act of any other person is included in the definition, the law has undergone a change. In order to judge the effect of the commission of a corrupt practice on the election of a returned candidate one has to go to section 100, sub section 1(b), (d) (ii). It is not necessary to refer to sub-section (2) of the section. If a corrupt practice is proved to have been committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent the election stands vacated without any further proof. If the corrupt practice is proved to have been committed in the interests of the returned candidate by a person other than mentioned in clause (b) the petitioner has to prove further that the result of the election, in as far as it concerned the returned candidate, has been materially affected. It will thus be seen that these sections refer to many classes of persons who might be charged with having committed corrupt practices. In this view, it becomes absolutely necessary that particulars of the person who actually committed the practice should appear. It is a feature common to all the paragraphs of the petition that the persons charged with the offences has been generally described as respondent No. 1 and/or his agent, and/or his election agent, and/or any other person with the consent of the candidate and/or any other person acting in the interests of the candidate.

10. As regards the posters mentioned in paragraphs 8 to 13, it was pointed out that the exact places where the posters were displayed or pasted are not given. In a matter of this kind it is not possible to specify the particular wall where the particular poster was pasted or a particular person to whom the poster was distributed. I am of opinion that an allegation that these posters were published prominently in the whole of the Delhi Sadar constituency is sufficient in the circumstances.

11. As regards para 15, all that the petitioner has mentioned is that an objectionable poster was issued by Anti Communal Front. It has not been shown how and in what manner this body is connected with respondent No. 1.

12. As regards para 16 the connection of the speaker with respondent No. 1 is not clearly brought out. There is nothing to indicate whether the Hon'ble Minister spoke for the congress party and its candidates in general or that he spoke for respondent No. 1 with him in his particular view. At any rate there is nothing to

show that respondent No. 1 was connected with the speech or can be held responsible for the act of the speaker, on the principles of agency or other connections recognised in section 100.

13. As regards para 19 clause (c) and para 20 it is the obtaining of assistance from Government servants that constitutes a corrupt practice. It should be shown as to who actually obtained that assistance. The particulars of the assistance and that of the Government officers are given. The same observations apply to the obtaining of assistance from Ch. Murari Singh, Land Acquisition Collector referred in paras 21 and 22 and Shri Gopi Nath Aman referred in para 24.

14. As regards para 23, 27 and 28, it was conceded that particulars of bribery, illegal gratification and undue influence have not been given.

15. As regards para 25 referring to the defective character of the ballot boxes, it was the duty of the petitioner to have shown how non-compliance with statutory provisions had materially affected the result of the election as regards the returned candidate. That is necessary to bring it within section 100 sub-section (1)(d) (iv).

16. From what has been said above it will be seen that the petition does not comply with all the requirements of law in the matter of giving particulars of corrupt practices in accordance with section 83, R.P.A. 1951. Section 90 sub-section (5) lays down that the Tribunal may upon such terms as to costs or otherwise as it may deem fit allow particulars of any corrupt practice alleged in the petition to be amended or amplified in such a manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition. It shows that the tribunal cannot order the amendment of the petition but it does not debar the tribunal from granting the petitioner an opportunity of making an application, if so advised, to amend the petition or to amplify particulars already given. It is true that primarily it is the duty of the petitioner to comply with the requirements of law. It is not for the tribunal to offer an opportunity. At the same time power is conferred on it to ensure a fair and effective trial of the petition. One cannot afford to be very technical about it. In the circumstances, I would give time to the petitioner to consider the advisability of making an application under section 90(5). That application, if and when made, shall be considered by the Tribunal on its merits and shall be decided after having heard the parties.

17. *Issue No. 4.*—I have already considered this matter under issue No. 1. Mr. D. D. Chawla appearing for respondent No. 1 tells the tribunal that he is now possessed of the copies of the annexures.

18. *Issue No. 5.*—I find that the annexures have been actually verified. It is not necessary to decide whether they required to be verified.

Announced.

The 18th June 1957

(Sd.) RAMESHWAR DIAL.

Election Tribunal, Delhi.

ORDER

1. One of the objections to the proper character of the petition raised on behalf of respondent No. 1 was that it did not contain full particulars of corrupt practices alleged therein. This formed the subject matter of issue No. 3, which was disposed of by my order dated 18th June, 1957. It was found that the objection had force and certain omissions in regard to particulars were pointed out. As suggested by that order, the petitioner applied for amendment of the petition along with a draft amended petition showing where and how amendments were sought. Copies of the application and the draft amended petition were supplied in advance to Mr. D. D. Chawla, Counsel for respondent No. 1. He filed a reply to this application.

2. I have heard arguments of the parties in regard to the application. It has been made under section 90 sub-section (5) R.P. Act, 1951. That sub-section empowers the Tribunal to allow the particulars of any corrupt practice alleged in the petition to be amended or amplified but it does not empower the Tribunal to allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. This sub-section was added by Act 27 of 1957 in the parent Act of 1951. A similar provision was contained in section 83(3) of the parent Act. Originally the law required an election petition containing a concise statement of material facts to be accompanied by a

list setting forth full particulars of any corrupt practice or illegal practice which the petitioner might allege and another sub-section of section 83 empowered the tribunal to allow the particulars impleaded in the said list to be amended or to order further and better particulars in regard to any matter referred to therein to be furnished by the petitioner. Section 90(2) of the old as well as the amended Act provides that every election petition shall be tried by the tribunal as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. The interpretation of these two provisions as they stood before the amendment gave rise to a difference of opinion on more than one point. The first point was whether Order 6, Rule 17 C.P.C. could be invoked to order the amendment of the list setting particulars of corrupt practices or of the petition in general. The preponderance of opinion was that the power of amendment under Order 6, Rule 17 C.P.C. applied to the amendment of the petition in the matter of joinder or non-joinder of parties and other particulars. In regard to the list the view was taken as a specific provision has been made, the general provision cannot be applied and the tribunal's powers are more restricted under the specific provision than they were under the general rule. Another point which gave rise to difference of opinion was the extent to which the tribunal could allow the particulars to be amended. One view was that this power could not be exercised as to furnish the petitioner an opportunity to introduce new instances of corrupt practices already mentioned in the list. The difference arose from a broad or a narrow interpretation of what was meant by a corrupt practice as mentioned in section 83(3). Corrupt practices were then defined in sections 123 and 124. They are of various kinds or categories. Upon one view it was held sufficient compliance by the petitioner to invoke the tribunal's power to allow amendment if the category of a corrupt practice had been mentioned. It was not necessary that the category of a corrupt practice was to be taken as the definition of an offence, say as theft. A new instance was treated to be one which makes the transaction a different affair, though the same corrupt practice, by reference to time, place and parties to the commission of the practice. Mr. Radhey Lal Aggarwal, cited A.I.R. 1957 Supreme Court, 444, which sets that conflict at rest. The Hon'ble Court interpreted the old provision. The amendment of 1957 had made some changes in the two provisions as contained in old section 83(3) and 90(5) by expressly laying down that the tribunal shall not allow any amendment of the petition which will have the effect of introducing the particulars of a corrupt practice not previously alleged in the petition. The amendment, however, did not go far enough. It did not make it clear whether the corrupt practices meant the category of corrupt practices or a transaction constituting kind of corrupt practices mentioned in section 123. In view of the Supreme Court's decision, it may be taken that only a category of corrupt practices needs be mentioned in the petition to empower the tribunal for further particulars.

3. An historical retrospect of this provision has been considered necessary because of respondent No. 1's objection that the proposed amendment goes beyond the scope of section 90(5). The main argument based on this objection is that new instances and additional grounds have been taken. It is not denied that a corrupt practice as a category was mentioned in the original petition. His counsel specifically referred to paragraphs 23, 27 and 28. It is not denied that the corrupt practice as such was clearly mentioned in the original petition. As a matter of fact some other particulars were also given but the person who committed the corrupt practice and certain other particulars were not given. Those have now been provided in the amended petition by addition of three new paras, 23(a), 27(a) and 28(a).

4. Another branch of the same objection urged by Mr. D. D. Chawla for respondent No. 1 rests on the argument that the amendment of particulars can be ordered only in those cases where some particulars of the corrupt practice already appear in the petition. Where no particulars at all appear in the petition, no question of amending or amplifying them can arise. In other words, his argument is that the mention of corrupt practice only where allegations do not go beyond it is not sufficient to attract the tribunal's power of amendment under section 90(5). In the first place, this argument appears to be negated by the last three lines of this sub-section. In the previous lines the words "amended or amplified" have been used but here the legislature has used the words "introducing particulars", thereby indicating that the restricted construction placed upon the sub-section by Mr. D. D. Chawla is not sound. In the second place, the amendment was not intended and cannot be read as limiting the tribunal's power of amendment as it existed under the Act of 1951 before its amendment by Act 27 of 1957. The existing law has been expounded in A.I.R. 1957 Supreme Court 444 as mentioned above and its application to the interpretation of the amended sub-section 5 has also been indicated. This line of argument also fails.

5. Now I come to para 24. In my order of 18th June, 1957 I had pointed out that all the paragraphs dealing with the corrupt practices suffer from one common defect in that the doer or the person who committed the corrupt practice was not specified with sufficient precision. Second sub-para. of this paragraph of the petition refers directly or indirectly to two kinds of corrupt practices (1) Obtaining or procuring assistance of Government servants for the furtherance of a candidate's prospects at election; (2) Undue influence exercised on the voters at certain places of the constituency on 24th March, 1957 by the said Government servant obtaining of whose assistance is pleaded as a corrupt practice by itself. This paragraph has been allowed to stand as it was in the original petition. On re-reading it I find that it is expressly mentioned therein that respondent No. 1 obtained and procured services of the said Government servant. So the common defect mentioned as applying to all the paragraphs did not in fact exist in regard to this particular allegation. The corrupt practice of undue influence committed by Shri Gopi Nath Aman cannot, however, be allowed to be pleaded as an independent and distinct corrupt practice because no where the connection of Shri Gopi Nath Aman with respondent No. 1 has been shown. Undue influence on voters by him is certainly mentioned as the assistance rendered by him and was objectionable because he was a Government servant. The exercise of undue influence by him as a person apart from that capacity and thus affecting the election of respondent No. 1 is neither pleaded as such nor the particulars appear. At the time of framing of issues and at the time of leading evidence it shall be taken as a ruling of the tribunal that the petitioner has not pleaded undue influence on voters by Shri Gopi Nath Aman as a distinct practice, affecting the election but it shall be taken only as specification of the assistance which the Government servant rendered and which respondent No. 1 procured.

6. Paragraphs 8 to 13 deal with the publication of certain posters. Paragraph 15 deals with another poster in Devnagri and Urdu scripts alleged to have been issued by a body known as Anti Communal Front. Amendment of the particulars or their amplification in regard to these two allegations of corrupt practices are now given in paragraph 15-A. Mr D. D. Chawla's objection is that this ought not to have been done. Dealing with both the corrupt practices in a single paragraph has not, however, affected the clarity of the pleading in any way and the defect, if any, is that of drafting. Nothing further needs be done in this respect.

7. Paragraph 15-A, as it now stands, is stated to be bad because it goes beyond the original petition. The relevant paragraph did not make any distinction between section 100 sub-section 1 clause (a) and clause (d). The distinction between the two provisions as regards the legal effect of a corrupt practice varying according to circumstances has been dealt with at some length in my order of 18th June, 1957. That distinction is now introduced in paragraph 15-A and the two provisions have been relied upon as supporting alternative cases. It is urged that this is going beyond the proper scope of an amendment. I disagree with it. It falls within the suggestions made in my previous order and there is nothing wrong in the petitioner setting his case in the alternative. The distinction between the two provisions hangs on a question of fact about which one cannot always be certain. It can be concluded only by a finding of the tribunal. It was, therefore, proper to have set up an alternative case.

8. Objection was taken to the language of para 20-A, particularly the first sentence. I do not see anything objectionable in it. Thereby the petitioner has not introduced any allegation of any new corrupt practice. Its importance lies only in giving the background in which respondent No. 1 is alleged to have procured the assistance of a Government servant for the furtherance of his election prospects.

9. After having decided that the draft amended petition does not go beyond the scope of my order dated 18th June, 1957 or the statutory limitations set upon the tribunal's powers, to allow amendment of particulars, it becomes necessary to dispose of the application for amendment. Reading what I have said above with my order dated 18th June, 1957, I am of opinion, that a case for allowing amendment has been made out. The application for amendment is allowed, however, on payment of Rs. 100/- as costs. Large collection of facts constituting the petitioner's allegations could have been done in the first instance before the original petition was filed, had a little for thought and diligence had been exercised. This matter of amendment took some hours of the tribunal and the parties before this stage in the proceedings has been reached.

10. Amended petition attached to the application for amendment is to be treated as the amended petition for the trial of the matter. Its reply is to be filed on 2nd August, 1957. An advance copy of the reply may be supplied to the counsel for the petitioner on 1st August, 1957 at 10 A.M.

Announced:

The 22nd July, 1957.

(Sd.) RAMESHWAR DIAL,
Election Tribunal, Delhi.

No. 82/140/57/859.]

S.O. 169.—In pursuance of the provisions of sub-rule (3) of rule 140 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956 and in continuation of its notification No. 82/341/57/13613 dated the 25th September, 1958 published as S.O. 2058 in the Gazette of India Extraordinary, Part II—Section 3—Sub-section (ii) (No. 206) dated the 3rd October, 1958, the Election Commission hereby publishes the decision of the High Court of Judicature at Patna in the appeal filed by Md. Ibrahim Ansari against the Order dated the 25th August, 1958 of the Election Tribunal, Ranchi, in election Petition No. 341 of 1957.

MR. LAKSHMAN SARAN SINHA.
K. N. THAKUR.
GOPI KRISHNA SINHA.

IN THE HIGH COURT OF JUDICATURE AT PATNA.

ORDER SHEET.

Election Appeal No. 12 of 1958. (Arising out of Election Petition No. 341 of 57 of the Court of the Member, Election Tribunal, Ranchi.)

Md. Ibrahim Ansari—*Appellant*.

Versus

Mr. Masani and others—*Respondents*.

Serial No. of Order.	Date of Order.	Order with signature	Office note as to action (if any taken on order.
4.	14th November, 1958.	Three weeks' time is allowed, as prayed— (i) to file envelopes with necessary postage stamps, (ii) to file written processes for issue of appeal notices. (iii) to file paper books, and (iv) to file six typed copies of memorandum of appeal for service on the respondents, failing compliance with any of which the appeal shall stand dismissed without further reference to Bench.	

So far as the affidavit is concerned, it is stated that an affidavit has already been filed stating that the addresses given in the memorandum of appeal are correct, and, therefore, no further affidavit is necessary.

(Sd.) C. P. SINHA.

(Sd.) K. DAYAL.

Re. Order No. 4.

Envelopes with necessary postage stamps, written process for issue of appeal notice, paper books and six typed copies of the memorandum of appeal for service on the respondents not having been filed within the time allowed by Or.

No. 4 dated 14th November, 1958, the appeal stood dismissed for default on 5th December, 1958 by virtue of the said Order.

(Sd.) C. P. SINHA, D.R.

(Sd.) Illegible.

9-12-58.

Learned Advocate informed *Vide slip*.

(Sd.) Illegible.

15-12-58.

(Sd.) Illegible.

15-12-58.

(Sd.) C. P. SINHA, D.R.

15-12-58

[No. 82/341/57/1075]

By Order,

DIN DAYAL, Under Secy.

MINISTRY OF LAW

CORRIGENDUM

New Delhi, the 15th January 1959

S.O. 170.—In the Ministry of Law notification No. F. 5(3)/58-Elections, dated the 6th January, 1959 containing the declaration of the result of the election to the House of the People from the Katihar Constituency, published as S.O. 115 in the Gazette of India Extraordinary, dated the 6th January, 1959, insert the following at the end in the left hand corner of the declaration: against the name of the Returning Officer:—

“Place—Purnea.

Date—29-12-58.”

[No. F. 5(3)/58-Elections.]

E. VENKATESWARAN, Under Secy.

MINISTRY OF HOME AFFAIRS

New Delhi-I, the 3rd January 1959

S.O. 171.—In exercise of the powers conferred by Sub-Rule 1 of Rule 8 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, the President hereby directs that w.e.f. 16th April, 1958, all the posts under the Social Welfare & Rehabilitation Directorate shall be classified as under:—

S. No.	Description of the Post	Classification of Posts	Remarks
1	Honorary Director	.. ..	..
2	Honorary Deputy Director	.. ..	..
3	Administrative-cum-Accounts Officer	Class II	Gazetted Non-Ministerial
4	Assistant Director	Do.	Do. Do.
5	Medical Officer	Do.	Do. Do.
6	Chief Accountant	Do.	(Non-gazetted) Ministerial
7	Accountant	Class III	Do. Do.
8	Accountant	Do.	Do. Do.
9	Assistant Superintendents	Do.	Do. Non-Ministerial

S. No.	Description of the Post	Classification of Posts	Remarks
10	Supervisor	Class III Non-Gazetted, Non-Ministerial.	
11	Organiser	-Do- -Do-	-Do-
12	Manager	-Do- -Do-	-Do-
13	Superintendent	-Do- -Do-	-Do-
14	Assistant Superintendent-cum-Matron	-Do- -Do-	-Do-
15	Assistant Superintendent-cum-Nurse.	-Do- -Do-	-Do-
16	Organiser	-Do- -Do-	-Do-
17	Assistant Organiser	-Do- -Do-	-Do-
18	Assistant	-Do- -Do-	Ministerial.
19	U.D.C.	-Do- -Do-	-Do-
20	U.D.C./Cashier	-Do- -Do-	-Do-
21	L.D.C.	-Do- -Do-	-Do-
22	Store-keeper	-Do- -Do-	Non-Ministerial.
23	Marketing Officer	-Do- -Do-	-Do-
24	Sales Girls	-Do- -Do-	-Do-
25	Stenographer	-Do- -Do-	Ministerial.
26	Stenotypist	-Do- -Do-	-Do-
27	Investigator	-Do- -Do-	Non-Ministerial.
28	Investigator	-Do- -Do-	-Do-
29	Receptionist	-Do- -Do-	-Do-
30	Establishment Assistant	-Do- -Do-	-Do-
31	Instructors	-Do- -Do-	-Do-
32	Head-mistress	-Do- -Do-	-Do-
33	Nursery Teacher	-Do- -Do-	-Do-
34	Teacher	-Do- -Do-	-Do-
35	Compounder	-Do- -Do-	-Do-
36	Craft Teacher	-Do- -Do-	-Do-
37	Cutter	-Do- -Do-	-Do-
38	Tailor	-Do- -Do-	-Do-
39	Skilled worker	-Do- -Do-	-Do-
40	Helper	-Do- -Do-	-Do-

[No. 28(30)/58-RH.]

J.S. TYAGI, Under Secy.

New Delhi, the 14th January 1959

S.O. 172.—Whereas it appears to the Central Government that owing to his haying entered upon a course of wasteful extravagance Major His Highness Raja Lakshman Singh of Chamba, a land-holder, is likely to dissipate his property;

And whereas the Central Government is satisfied that it is desirable on grounds of general interest that the property of the said Major His Highness Raja Lakshman Singh be placed under the superintendence of the Court of Wards;

Now, therefore, in exercise of the powers conferred upon it by clause (d) of sub-section (2) of section 5 of the Punjab Court of Wards Act, 1903, as extended to the Union territory of Himachal Pradesh by the notification of the Government of India in the late Ministry of States notification No. 386-I. B. dated the 25th December, 1948, the Central Government hereby directs that the property of the said Major His Highness Raja Lakshman Singh be placed under the superintendence of the Court of Wards.

[No. F. 13/27/58-Poll. III.]

S. NARAYANSWAMY, Dy. Secy.

MINISTRY OF FINANCE

(Department of Expenditure)

New Delhi, the 14th January 1959

S.O. 173.—In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution, and after consultation with the

Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby directs that the following further amendments shall be made in the Civil Service Regulations, namely:—

For article 419 of the said Regulations, the following shall be substituted; namely:—

- "419. (a) A Government servant who is dismissed, removed or compulsorily retired from public service, but is reinstated on appeal or revision, is entitled to count his past service.
- (b) The period of break in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement, and the period of suspension (if any) shall not count unless regularised as duty or leave by a specific order of the authority which passed the order of reinstatement."

[No. F. 11(68)-EV/58.]

N. C. JAIN, Dy. Secy.

(Department of Economic Affairs)

New Delhi, the 14th January 1959

S. O. 174.—Statement of the Affairs of the Reserve Bank of India, as on the 9th January 1959.

BANKING DEPARTMENT

Liabilities	Rs.	Assets	Rs.
Capital paid up	5,00,00,000	Notes	8,96,89,000
Reserve Fund	80,00,00,000	Rupee Coin	3,31,000
National Agricultural Credit (Long-term Operations) Fund	25,00,00,000	Subsidiary Coin	4,51,000
National Agricultural Credit (Stabilisation) Fund	3,00,00,000	Bills Purchased and Discounted :—	
Deposits :—		(a) Internal . . . . .	..
(a) Government		(b) External . . . . .	..
(1) Central Government	66,14,99,000	(c) Government Treasury Bills	14,62,55,000
(2) Other Governments	10,87,99,000	Balances held abroad*	27,03,77,000
(b) Banks	69,39,05,000	**Loans and Advances to Governments	31,93,72,000
(c) Others	116,11,65,000	Other Loans and Advances†	89,99,07,000
Bills Payable	18,21,72,000	Investments	239,56,65,000
Other Liabilities	29,55,25,000	Other Assets	11,10,18,000
TOTAL	423,30,65,000	TOTAL	423,30,65,000

*Includes Cash & Short term Securities.

**Includes Temporary Overdrafts to State Governments.

†The item 'Other Loans and Advances' includes Rs. 2,24,01,000 advanced to scheduled banks against usance bills under Section 17(4) (c) of the Reserve Bank of India Act.

Dated the 14th day of January 1959.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 9th day of January 1959

ISSUE DEPARTMENT

Liabilities	Rs.	Rs.	Assets	Rs.	Rs.
Notes held in the Banking Department;	8,95,89,000		A. Gold Coin and Bullion :—		
Notes in circulation	1627,36,06,000		(a) Held in India	117,76,03,000	
Total Notes issued		1636,32,95,000	(b) Held outside India . . . .	..
			Foreign Securities	164,67,56,000	
			TOTAL OF A.		282,43,59,000
			B. Rupee Coin		134,10,47,000
			Government of India Rupee Securities		1219,78,89,000
			Internal Bills of Exchange and other commercial paper . . . . .		..
TOTAL—LIABILITIES		1636,32,95,000	TOTAL—ASSETS		1636,32,95,000

Dated the 14th day of January, 1959.

H. V. R. JENGAR, Governor.

[No. F. 3(2)-Bc/59.]

A. BAKSI, Jt. Secy.

(Department of Revenue)**ESTATE DUTY***New Delhi, the 13th January 1959*

S.O. 175.—The Central Government hereby renews the appointment of the under-mentioned Valuers whose names were first published in Part II, Section 3 of the Gazette of India, dated the 21st January, 1956 under S.R.O. No. 140, for a further period of three years from the 14th January, 1959.

1. Engineers/Surveyors/Architects

<i>S. No.</i>	<i>Name</i>	<i>Address</i>
1.	Shri Ganguly, J. L. B.Sc. (Glass), A.M.E.E., (B. Tech.), A.M.I.E.	43, Vivekananda Road, Calcutta-7.
2.	Shri Apté, U. M., G.D. Arch., A.I.I.A.	479/3, Tilak Road, Poona-2.
3.	Shri Gajjar, Atmaram M., G.D. Arch., F.I.I.A.	Astodia Road, Ahmedabad-1.
4.	Shri Gupte, V. V., B. E., M.I.E.	27, Alli Chambers, Tamarind Lane, Fort Bombay.
5.	Shri Sarma, S. Varadaraja, B.E., M.I.E.	Pattam Palace, P. O. Trivandrum-4.

11. Accountants

1.	Shri Mukherji, P. K., M.A., B.Com. (Cal.), F.C.A., F.R.E.S. (Lond.).	C/o. Green & Co., Chartered Accountants 3, S. N. Banerjee Road, Calcutta-13.
2.	Shri Shah, Chimanlal C., B. Com., F.C.A.	C/o. Naushir M. Marfatia & Co., Chartered Accountants, P.O. Box 95, Gandhi Road, Ahmedabad.
3.	Shri Shah, M. B., B. Com., F.C.A.	C/o. M. K. Dandekar & Co., Chartered Accountants, 26, Fifth Main Road, Gandhi Nagar, Bangalore-9.
4.	Shri Roy, Dilbag, B.A., A.S.A.A., F.C.A.	C/o. Roy Malhotra & Co., Chartered Ac- countants, Residency Road, Srinagar, Kashmir.

The Scale of charges for the remuneration of Valuers appointed by the Central Government for valuing any property shall be as fixed below and no such valuer shall charge a fee at a scale higher than the scale so fixed.

Scale of Charges

On the first Rs. 50,000/- of the property so valued	. . . . .	½% of the value.
On the next Rs. 1,00,000/- of the property so valued	. . . . .	¼% of the value.
On the balance of the property so valued.	. . . . .	¼% of the value.

[No. 1/F. No. 5/145/58-ED.]

D. SUBRAMANIAN, Dy. Secy.

(Department of Revenue)**ORDER****STAMPS***New Delhi, the 12th January 1959*

S.O. 176.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the whole of the stamp duty chargeable under sub-section (1) of section 8 of the said Act on the debentures of Rs. 10 lakhs to be issued by the Municipal Committee, Sagar, to the Punjab National Bank Limited.

[No. 2. F. No. 1/2/59-Stamps/Cus. VII.]

D. N. LAL, Under Secy.

OFFICE OF THE COLLECTOR OF CENTRAL EXCISE AND LAND CUSTOMS, BOMBAY

NOTICE

Bombay, the 13th January 1959

S.O. 177.—Whereas it appears that the marginally noted goods which were seized by the S.R. Police, Ramghat on 10th November 1958 at Nenewadi, a place in the vicinity of Goa border, were imported by Land, from Goa (Portuguese Territory in India) in contravention of Section 5(1) of the Land Customs Act, 1924 and the Government of India, Ministry of Commerce and Industries Import Control Order No. 17/55 dated 7th December 1955 issued under the Import & Export (Control) Act, 1947 and deemed to have been issued under Section 19 of the Sea Customs Act, 1878. Now therefore, any person claiming the goods is hereby called upon to show cause to the Dy. Collector of Central Excise and Land Customs Bombay why the above mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act, 1878 and why a penalty should not be imposed on him under Section 7(1)(c) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act, 1878.

If such an owner fails to turn up to claim the above mentioned unclaimed goods or to show cause against the action proposed to be taken within 30 days from the publication of this notice in the Government of India Gazette, the goods in question will be treated as unclaimed and the case will be decided accordingly.

[No. VIII(b)10(259)Cus./53.]

H. C. BAHRI, Dy. Collector.

NOTICE

Bombay, the 15th January 1959

Shri Edward George Heinz.

61E, Cabezas St. San Roque,

Cavite City, PHILIPPINE ISLAND.

SUB:—Seizure of foreign currency (American dollars), Cigarette, Gillette blades etc.

S.O. 178.—Whereas it appears that the above mentioned goods have been imported by land from Goa without a permit as required under Section 5(1) of the Land Customs Act, 1924 and whereas the said goods were not covered by a licence as required by the Government of India, Commerce Deptt., Ministry of Commerce and Industries Order No. 17/55 dated 7th December 1955 issued under the Imports and Exports (Control) Act, 1947 and whereas the Order is deemed to have been issued under Section 19 of the Sea Customs Act, VIII of 1878 and whereas the foreign currency was imported into India in contravention of the Reserve Bank of India Notification No. FERA 87/49-RB, dated 10th September 1949 as amended issued under Section 8(1) of the Foreign Exchange Regulations Act, 1947 and deemed to have been issued under Section 19 of the Sea Customs Act, 1878. And whereas it appears that the actions of Shri Edward George Heinz as a person concerned in these offences attract the operation of Section 7(1)(c) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act, 1878. Now therefore Shri Edward George Heinz is hereby required to show cause to the undersigned why a penalty should not be imposed on him under these Sections and why the above mentioned goods should not be confiscated under Section 5(3) of the Land Customs Act, 1924 read with Section 167(8) of the Sea Customs Act, 1878.

2. Shri Edward George Heinz is further directed to produce at the time of showing cause all the evidence upon which he intends to rely in support of his defence. He is further directed to inform the undersigned whether he desires to be heard in person by the undersigned in the case.

3. If no cause is shown against the action proposed to be taken within ten days of the receipt of this notice, the case will be decided ex parte.

[No. VIII(b)10(14)Cus/58.]

T. C. SETH, Collector.

CENTRAL BOARD OF REVENUE

ESTATE DUTY

New Delhi, the 19th January 1959

S.O. 179.—The following draft of further amendments to the Estate Duty Rules, 1953*, which the Central Board of Revenue propose to make in exercise of the powers conferred by sub-section (1) of section 85 of the Estate Duty Act, 1953 (34 of 1953), is published as required by sub-section (1) of the said section 85, for the information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration on or after the 21st February, 1959.

2. Any objection or suggestion which may be received from any person with respect to the said draft before the date so specified will be considered by the said Board.

Draft Amendment

In the said rules, rule 31 shall be renumbered as sub-rule (1) thereof and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted, namely:—

“(2) The policy together with the above-mentioned assignment shall be forwarded to the Controller of Estate Duty for the purpose of acceptance on behalf of the President of India. The acceptance on behalf of the President by the Controller shall be recorded in the following form:

‘I, C. D. Controller of Estate Duty.....hereby accept the above-mentioned assignment on behalf of the President of India under clause (f) of sub-section (1) of section 33 of the Estate Duty Act, 1953.’”

Explanatory Note

(This note is not a part of the amendment. It is given with a view to explain the purpose of the amendment).

This is a formal amendment designed to provide for the acceptance of the assignment on behalf of the President by the Controller of Estate Duty.

[No. 2/F.No. 12/12/55-E.D.]

D. SUBRAMANIAN, Secy.

MINISTRY OF STEEL, MINES AND FUEL

(Department of Mines & Fuel)

New Delhi, the 14th January 1959

S.O. 180.—In exercise of the powers conferred by sub-section (1) of section 15 of the Coal Mines (Conservation and Safety) Act, 1952 (12 of 1952), read with rule 20 of the Coal Mines (Conservation and Safety) Rules, 1954, and in supersession of the notification of the Government of India in the Ministry of Steel, Mines and Fuel (Department of Mines and Fuel) No. S.O. 18, dated the 8th February, 1958, the Central Government hereby reconstitutes the Technical Advisory Committee (Mining) which shall consist of the following persons, namely:—

Shri S. Mukherjee, Chief Mining Engineer, and Member, Coal Board.	Chairman (nominated by the Coal Board).
Shri G. S. Jabbi, Additional Chief Inspector of Mines in India.	Member (nominated by the Chief Inspector of Mines).
Shri S. G. Krishnan, Chief Mining Adviser, Eastern Railways.	Member.
Shri A. B. Dutta, Deputy Director (Survey), Geological Survey of India.	Member (nominated by the Director, Geological Survey of India).

*S. R. O. 556 of 1954.

Shri A. A. Beard, Messrs. Bird & Co.

Shri C. R. Sharma, Superintendent of Collieries (Co-ordination), National Coal Development Corporation (P) Ltd., Ranchi.

Shri M. K. Bose, Messrs. Macneill & Barry Ltd.

Shri B. H. Engineer, Messrs. Tata Iron & Steel Co. Ltd.

Members (representatives of mining interests co-opted by the Board).

Shri U. N. Jha, Inspecting Officer, Coal Board, Dhanbad will act as Secretary to the Committee.

[No. C5-4(1)/58.]

P. N. DHIR, Under Secy.

(Department of Iron and Steel)

New Delhi, the 17th January, 1959.

S.O. 181 ESS. COMM/IRON AND STEEL-2(c) AM/(32).—In exercise of the powers conferred by sub-clause (c) of clause 2 of the Iron and Steel (Control) Order, 1956, the Central Government hereby directs that the following further amendment shall be made to the notification of the Government of India, in the Ministry of Steel, Mines and Fuel, No. S.R.O. 2041/ESS. COMM/IRON AND STEEL-2(c), dated the 11th June, 1957, as amended from time to time namely:—

In the Schedule annexed to the said notification, in columns 2 and 3 thereof, against 'OTHERS' the following entries shall be added, namely:—

1	2	3
"37. Deputy Chief Controllers (Export Promotion) at Madras, Bombay and Calcutta.		4 and 5
38. Deputy Director of Export Promotion, Ministry of Commerce and Industry, New Delhi.		In respect of releases Iron and Steel (including tin plates) under S.O. No. 2643-ESS. COMM Iron and Steel-15 1) published in the Gazette of India Extraordinary dated 18-12-58 under Part II—Section 3-Sub-Section (ii), as amended from time to time."

[No. SC(A)-4(540.)]

New Delhi, the 19th January 1959

S.O. 182.—/ESS. COMM/IRON AND STEEL-2(c)/AM(33).—In exercise of the powers conferred by sub-clause (c) of clause 2 of the Iron and Steel (Control) Order, 1956, the Central Government hereby directs that the following further amendment shall be made to the notification of the Government of India, in the Ministry of Steel, Mines and Fuel, No. S.R.O. 2041/ESS. COMM/IRON AND STEEL-2(c), dated the 11th June, 1957, as amended from time to time, namely:—

In the Schedule annexed to the said notification, in column 2 thereof, against 'WEST BENGAL', for the existing entries at Nos. 1 to 3, the following shall be substituted, namely:—

1	2
"1. Director of Industries West Bengal.	
2. Deputy Director of Industries (Iron and Steel), West Bengal.	
3. All Assistant Directors of Industries (Iron and Steel), West Bengal.	

[No. SC(A)-1(13)/59.]

CORRIGENDUM

New Delhi, the 17th January 1959

S.O. 183.—ESS. COMM/IRON AND STEEL-15(1)/Corr. (1).—In the Iron and Steel Controller's Notification relating to the special concessional Col. I and Col. II maximum selling prices for Prime quality steel, Pig Iron and Tinplates, notified by the Government of India in the Ministry of Steel, Mines and Fuel, (Department of Iron and Steel), Notification No. S. O. 2643-ESS. COMM/IRON AND STEEL-15(1), dated the 17th December, 1958, published in the Gazette of India Extraordinary, Part II, Section 3, Sub-Section (ii), dated the 18th December, 1958, the following corrections shall be made, namely:—

For the words "on the authority of the Quota Certificates issued by the Deputy Chief Controllers of Export Promotion at Madras, Bombay, Calcutta and Delhi" occurring in the last paragraph of the abovesaid notification;

Read "on the authority of the Quota Certificates issued by the Deputy Chief Controllers (Export Promotion) at Madras, Bombay and Calcutta and the Deputy Director of Export Promotion, Ministry of Commerce and Industry, New Delhi."

A. S. BAM, Iron and Steel Controller.

[No. SC(A)-4(540)/58.]

J. S. BAIJAL, Under Secy.

(Department of Steel, Mines and Fuel)

New Delhi, the 19th January 1959

S.O. 184.—In exercise of the powers conferred by sub-section (2), of section 4 of the Coal Mines (Conservation and Safety) Act, 1952 (12 of 1952), the Central Government has appointed the following as Chairman and member, respectively, of the Coal Board, with effect from the date shown against each:

1. Shri A. Zaman, ICS, Coal Controller with the Government of India, *vice* Shri P. M. Nayak, ICS.—(Afternoon of the 3rd January 1959).
2. Shri S. S. Grewal, Chief Inspector of Mines in India, *vice* Shri G. S. Jabbi, Additional Chief Inspector of Mines—31st December, 1958.

2. It is hereby notified for general information that the Coal Board now consists of the following persons who have been appointed by the Central Government as Chairman and members thereof, namely:—

Chairman

1. Shri A. Zaman, ICS, Coal Controller.

Members

2. Shri S. S. Grewal, Chief Inspector of Mines in India.
3. Shri S. V. M. Sundaram, Deputy Coal Controller, (Distribution).
4. Shri S. Mukherjee, Chief Mining Engineer, Coal Board.
5. Shri B. K. Ghosh, Deputy Coal Controller, (Production).

[No. C5-1(1)/59.]

CHHEDI LAL, Dy. Secy.

MINISTRY OF FOOD & AGRICULTURE

(Department of Agriculture)

New Delhi, the 16th January 1959

S.O. 185.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following further amendments in the Indian Institute of Sugarcane Research, Lucknow (Recruitment to Gazetted Posts) Rules, 1958, namely:—

1. In the Schedule to the said rules:—

(a) after the entries relating to the Agriculture Engineer, the following entries relating to the Gur Chemist, shall be inserted, namely:—

Recruitment Rules for the post of Gur Chemist under the Gur Grading Scheme at Indian Institute of Sugarcane Research, Lucknow (Ministry of Food and Agriculture).

Name of post	No. of posts	Classification	Scale of pay	Whether selection post or non-selection post	Age limit for direct recruits	Educational and other qualification required	Whether age and educational qualifications prescribed for the direct recruits will apply in the case of promotees	Period of probation if any	Method of rectt. whether by direct or by promotion or transfer & percentage of the vacancies to be filled by various methods	In case of rectt. by promotion/transfer, grades from which promotion to be made	If a DPC exists what is its composition	Circumstances in which UPSC is to be consulted in making rectt.
1	2	3	4	5	6	7	8	9	10	11	12	13
			Rs.									
Gur-Chemist.	1	G.C.S. Class I Gazetted.	600—40—1000— 1000—1050— 1050—1100— 1100—1150.	N.A.	Below 45 years.	Essential : (i) Master's or equivalent Honours degree in Chemistry from a recognised University. OR Degree in Science of a recognised University followed	N.A.	Two years.	By direct recruitment.	N.A.	N.A.	As required under the rules.

by a diploma in Sugar Technology from a recognised Institute.

- (i) About 5 years' practical experience of initiating and guiding research in Gur or Sugar Technology.

Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.

Desirable :

Experience of sugar manufacture in a Sugar Factory as a Chemist.

(b) after the entries relating to the Chemist-in-Charge (Gur & Khandsari Scheme), the following entries relating to the Soil Survey Officer shall be inserted, namely:—

Recruitment rules for the post of Soil Survey Officer at the Indian Institute of Sugarcane Research, Lucknow.

Name of post	No. of posts	Classification	Scale of pay	Whether selection post or non-selection post	Age limit for direct recruits	Educational and other qualifications required	Whether age and educational qualifications prescribed for the direct recruits will apply in the case of promotees.	Period of probation if any	Method of rectt. whether by direct or by promotion or transfer & percentage of the vacancies to be filled by various methods	In case of rectt. by promotion/transfer, grades from which promotion to be made	If a DPC exists what is its composition	Circumstances in which U.P.S.C. is to be consulted in making rectt.
1	2	3	4	5	6	7	8	9	10	11	12	13
Soil Survey Officer.	1	G.C.S. Class II Gazetted.	Rs. 275—25—500— EB=30—650— EB=30—800	Selection	Below 35 years.	Essential : (i) Master's degree in Chemistry or in Agricultural Chemistry or B.Sc. (Agri.) with post-graduate diploma in Soil Chemistry from a recognised University/Institution. (ii) About 3 years'	Edu.— Yes Age.— No	2 years for direct rectts.	By promotion failing which by direct recruitment.	Promotion : (a) R. A. (Chemical) (b) Sr. Soil & Asstt. (c) Sr. Chemical	Class II D.P.C.	As required under the rules.

experience of re-
search in Soil with
particular refer-
ence to Soil Survey.
Qualifications relax-
able at Commis-
sion's discretion in
case of candidates
otherwise well
qualified

Desirable :

- (i) Some teaching
experience in Soil
- (ii) Research experi-
ence of trace ele-
ments in Soil.

Assist
with 5
years'
service
in the
grade.

[No 4-3/59, Scane Instt.]

S. D. UDHRAIN, Under Secy.

(Department of Agriculture)

ORDER

New Delhi, the 15th January 1959

S.O. 186.—In pursuance of the sub-clause (1) of clause 3 of the Fruit Products Order, 1955, the Central Government hereby constitutes for a period of two years from the date of this order, the Central Fruit Products Advisory Committee consisting of the following members, namely:—

Chairman

1. Agricultural Marketing Adviser to the Government of India, Licensing Officer, Nagpur.

*Members**Clause 3(1)(a).*

2. Shri Naoroj. D. Kooka, c/o Messrs. Ardeo, 13/19, Meadows Street, Bombay.
3. Shri Vittal Mallya, c/o Messrs. Kissan Products Ltd., 32, Grant Road, Bangalore.
4. Shri K. C. Chakarwarty, c/o Messrs. Imperial Fruit Preservation Co., Calcutta.
5. Shri Lila Dhar, c/o Messrs. D. D. Harisharan Laldhar, New Misri Bazar, Amritsar.
6. Shri Manohar Lal Aroura, c/o Messrs. Aroura Fruit Industries, Charbagh, Lucknow.

Elected by the Licencees in the Northern, Central, Western, Eastern and Southern Zones.

Clause 3(1)(b).

7. Shri H. C. Bhatnagar, M.Sc., c/o Chocs Canning (Private) Ltd., Nagpur.
8. Shri A. V. Reddy, (B.Sc. Eng., England), Managing Director, India Fruit Ltd., Kadiyam (Andhra).

Nominated members possessing, in the opinion of the Licensing Officer, suitable technical qualifications with regard to the manufacture of Fruit Products.

Clause 3(1)(c).

9. Dr. Girdhari Lal, Assistant Director, 'F' Central Food Technological Research Institute, Mysore.

Clause 3(1)(d).

10. Dr. Sham Singh, Deputy Agricultural Commissioner, Indian Council of Agricultural Research, Queen Victoria Road, New Delhi-1.

Clause 3(1)(e).

11. Dr. P. K. Kymal, Technical Adviser, Government of India, Ministry of Food & Agriculture (Department of Food), Room No. 182, Krishna Bhavan, Queen Victoria Road, New Delhi.

Clause 3(1)(ee).

12. Pandit Shri Ram Sharma, Vice-Chairman, U.P. Fruit Development Board, Balika Basti, Agra.
13. Shri S. D. D. Nichols Roy, Managing Director, The United Fruit Co., Ltd. Shillong, Assam, India.

Representative of fruit and vegetable growers.

*Clause 3(1)(f).**Member Secretary*

14. Shri P. H. Bhatt, Senior Marketing Development Officer, Fruit Products, Department of Marketing & Inspection, Nagpur.

[No. F. 4-78/58-AM.]

S. NIGAM, Under Secy.

MINISTRY OF HEALTH

New Delhi, the 6th January 1959

S.O. 187.—In exercise of the powers conferred by sub-section (3) of section 8 of the Provident Funds Act, 1925 (19 of 1925), the Central Government hereby directs that the following institution shall be added to the Schedule of the said Act:—

“Kalavati Saran Children's Hospital, New Delhi”.

[No. F.15-13/57-MII.]

New Delhi, the 8th January 1959

S.O. 188.—In exercise of the powers conferred by sub-section (2) of section 8 of the Provident Funds Act, 1925 (19 of 1925), the Central Government hereby directs that the provisions of the said Act shall apply to the provident fund established for the benefit of non-pensionable employees of the Kalavati Saran Children's Hospital, New Delhi.

[No. F.15-13/57-MII.]

New Delhi, the 13th January 1959

S.O. 189.—In pursuance of sub-rule (d) of rule 2 of the Indian Medical Council Rules, 1957 published with the notification of the Government of India in the Ministry of Health S.R.O. No. 1319, dated the 16th April, 1957, the Central Government hereby appoints Dr. Jagdish Singh, Director of Health Services, Punjab, as ‘Returning Officer’ for Punjab for the conduct of election of a member to the Medical Council of India under clause (c) of sub-section (1) of section 3 of the Indian Medical Council Act, 1956.

[No. F. 5-40/58-M. I.]

New Delhi, the 14th January 1959

S.O. 190.—In pursuance of item (30) in Part II of the Schedule to the Dentists Act 1948 (16 of 1948), the Dental Council of India hereby approve the following foreign qualification, namely:—

“The Degree of Doctor of Philosophy granted by the School of Medicine and Dentistry, University of Rochester, Rochester U.S.A.”

S. BRATT, LDSc., FICD,
Secretary,
Dental Council of India.

[No. F.6-13/58-M.I.]

KRISHNA BIHARI, Dy. Secy.

MINISTRY OF TRANSPORT AND COMMUNICATIONS

(Department of Transport)

(Transport Wing)

PORTS

New Delhi, the 17th January 1959

S.O. 191.—In exercise of the powers conferred by section 7 and sub-section (2) of section 9 of the Bombay Port Trust Act, 1879 (Bombay Act VI of 1879), and in supersession of the Ministry of Transport Notification No. 8-C-PI(6)/57, dated the 1st June 1957, the Central Government hereby appoints Shri C. P. Srivastava, Senior Deputy Director General of Shipping to be a member of the Bombay Port Trust Board (representative of the Mercantile Marine Department, Bombay) in place of Shri S. V. Kallasapathy, Deputy Director General of Shipping.

[No. 8-PG(1)/59.]

K. NARAYANAN, Dy. Secy.

(Department of Transport)

(Transport Wing)

MERCHANT SHIPPING

New Delhi, the 17th January 1959

S.O. 192.—In exercise of the powers conferred by Section 273 of the Indian Merchant Shipping Act, 1923 (21 of 1923) the Central Government hereby appoints the District Magistrate (Judicial), Kanyakumari, as the person to receive and take possession of wreck and to perform the duties connected therewith, within the Kanyakumari district and makes the following further amendment in the notification of the Government of India in the late Ministry of Transport No. S.R.O. 138 dated the 7th January 1953, namely:—

In the Schedule to the said notification, for the entries "The Sub-Divisional Magistrate at Colachel" and "The local jurisdiction of the Magistrate" occurring in the second and third columns against section 273, the entries "The District Magistrate (Judicial) Kanyakumari" and "The District of Kanyakumari" shall respectively be substituted.

[No. 33-MA(5)/58.]

S. K. VENKATACHALAM, Dy. Secy.

(Department of Communications)

(P. & T.)

New Delhi, the 19th January 1959

S.O. 193.—In exercise of the powers conferred by section 9 of the Indian Post Office Act, 1898 (6 of 1898), the Central Government hereby makes the following further amendments to the Indian Post Office Rules, 1933, namely:—

In item (d) of sub-rule (1) of rule 30 of the said Rules before the proviso, the following shall be inserted, namely:—

"In cases where the proprietor, manager or publisher cannot adhere to the provision of three days notice due to reasons beyond his control, the Postmaster General may in relaxation of the said provision permit the posting of the newspaper at any time subsequent to the prescribed date provided the application for late posting is received by him before the prescribed date of posting. The interval between the dates of publication of the issue sought to be posted late and the previous one shall not in any case exceed 31 days".

[No. 5/37/58-CI.]

K. K. SARAN, Dy. Secy

MINISTRY OF RAILWAYS

(Railway Board)

New Delhi, the 14th January 1959

S.O. 194.—It is notified for general information that the Deputy General Manager, North East Frontier Railway, Katihar, is *ex-officio* authorised to act for and on behalf of the Central Government in respect of any judicial proceedings in which the North East Frontier Railway may be concerned.

[No. E(G) 58LL2-14.]

ORDER

New Delhi, the 14th January 1959

S.O. 195.—In exercise of the powers conferred by rules I of order XXVII of the first schedule to the Code of Civil Procedure, 1908 read with section 141 of the said Code, the Central Government hereby appoints the Deputy General Manager, North East Frontier Railway, Katihar to sign and verify plaints, written statements, petitions, applications including applications for executions and any other pleadings or proceedings in any suit or other proceedings by or against the Central Government in respect of the North East Frontier Railway.

[No. E(G) 58LL2-14.]

R. E. DE SA, Secy

MINISTRY OF IRRIGATION AND POWER

New Delhi, the 14th January 1959

S.O. 196.—In exercise of the powers conferred by the proviso to sub-section (4) of Section 1 of the Electricity (Supply) Act, 1948 (54 of 1948) and in partial modification of Notification No EL-III 301(7), dated the 27th December, 1958, the Central Government hereby further extends the period referred to in the said notification in the case of the Punjab, upto and including the 28th February, 1959.

[No EL-III-301(7).]

G. D KSHETRAPAL, Dy. Secy

MINISTRY OF REHABILITATION

(Office of the Chief Settlement Commissioner)

New Delhi, the 10th January 1959

S.O. 197.—Whereas the Central Government is of opinion that it is necessary to acquire the evacuee properties in the schedule hereto annexed in the State of Bihar for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons;

Now, therefore, in exercise of the powers conferred by section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), it is notified that the Central Government has decided to acquire, and hereby acquires the evacuee properties specified in the said Schedule

THE SCHEDULE

S. No.	Holding with Ward No.	Locality in which situated	Name of Evacuee
1	2	3	4
1	106/113	Kharjarpur	Khan Bahadur Md. Ismail.
2	96/103	Do	Firoza Khatun w/o A. Halim.
3	20/23	Do	Md. Amiruddin
4	20/23A	Do	Md. Aniruddin.
5	92/99	Do	Do
6	One pucca pose two house.	khepra storied Do	Do.
7	3/3	Farislonc, Rapatgan), Adamapur	S M.A Khorasani.
8	5/5	Do.	Do.
9	6/6	Do.	Md. Maqbul Ali.
10	2/2	Do	Amzad Ali.
11	63/68	Raja S N Road, Masaque Chak, Bhagalpur.	Dr. Wazul Haque.
12	64/69	Do.	Do.
13	-/33	Gola Ghat Road, Bhagalpur	Abdul Wahud.
14	-/1	Sarai Kalighat Road	Gulam Sahabas.
15	6/7	Wazarat Hussain Lane, Mulla Chak	Do.
16	-/32	Satadat Hussain Lane, Mulana-chak	Do.
17	5/15	Badul Musaina Lane, Mulana Chak.	Abul Hussain.
18	-/18	Bizalichak	Tafazul Hussain.
19	-/7	Jabbon Chak	Wasif Khatama.
20	28/31	Middle Natha Nagar Road	Asgar Ali.
21	31/30	Winding Road, Husama Bad	Md. Hussain Alam s/o Late Idriah Alam of Husaina Bag.
22	36/35	Do.	Abdul Raut.
23	21/24	Mafiz Hussain Lane. Sikandarpur.	Hafizur Rahaman.

1	2	3	4
24	22/25 . . .	Sikandarpur . . .	Hafizur Rehman.
25	20/23 . . .	Do.	Izharul Hussain.
26	27/36 . . .	Win ling Road, Moghalpur . . .	Bibi Zinatun Nissa.
27	-/55 . . .	Purab Tola, Kahalgaon . . .	Sk. Isaque.
28	64/65 . . .	Factory Road, Barari . . .	Syed Gulam Zilani.
29	-/32 . . .	Mulla Chak	Gulam Sohawaz.
30	-/69 . . .	. . . . .	Imam Uddin.
31	17, Ward No. II, Circle No. IV.	Vikhampur Road, Vikhampur . . .	Musa Khan.
32	One house . . .	Bandhu Modi Lane, Mogalpur . . .	Tasatak Hussain.
33	Do.	Do.	Zahir Alam.
34	12	Ashanandpur	Arwari Begam.
35	11/10	Sikandarpur	Bibi Noor Zahan Begum w/o Samasul Haque.
36	66/66	Mulana Chak	Farzand Ahmad.
37	1/1	Mirazan Hat Road	Abdul Hai.
38	50/53	Kharjarpur, Road	Sabdu Mian.
39	16/16	Mahibani Patti Lane, Sujaganj . . .	Abdul Ganni.
40	-/55	Ganichak, Bhagalpur	Fakirullah.
41	-/3	Sarai Bhagalpur	Abdul Quddus.
42	21/22	Kudarat Hussain Lane, Barahapura, . . .	Bibi Ahamadi Khanaw.
43	76/77	Factory Road, Brari	Akhatar Hussain.
44	One house	Mohabili Chak	Nafiz Khan, Bazid Khan, and Nawiz Khan.
45	68/69	Salamad Hussain Road, Barahpur, . . .	Bibi Moima Khatun w/o Zahurul Haque.
46	One house	Mohabilli Chak	Nafiz Khan, Bazid Khan and Nawiz Khan.
47	1/22 Ward No. V, Circle No. IX.	Jabbar Chak	Md Salim.
48	37 Ward No. I, Circle No. 21.	Khanjarpur	Bibi Sakina Khatun.
49	One house	Banka	Syed Raza Hussain.
50	1/1	Durakhan Lane, Adampur	Md. Ismail.
51	12 (old) 15 (New) Ward No. I Circle No. II.	Khanjarpur Road	K.B. Ismail and Brother Halim of Khanjarpur.
52	2 Ward No. I	Gurbat Jamadar Lane	Do.
53	1 Ward No. I	Dumkdan lane	K.B. Md. Ismail of Kharagpur, Bhagalpur.
54	13/14 Ward No. I	Loki Kabari Lane	Do.
55	10 Ward No. I	Faris Lane Ropatganj, Adampur . . .	Nozammauddin.
56	17 Ward No. 8	Hafiz Hussaini Lane, Sikandarpur . . .	Hafizul Rahaman of Sikandarpur.
57	18 Ward No. 8	Hafiz Hussaini Lane, Sikandarpur . . .	Hafizul Rahman of Sikandarpur.
58	26 Ward No. 8	Do.	Hafizur Hussain s/o Majibur Rahma, Sikandarpur, Bhagalpur.
59	7 Ward No. 8	Do.	Izharul Hussain of Sikandarpur, Bhagalpur.
60	8 Ward No. 8	Do.	Do.
61	19 Ward No. 8	Do.	Do.
62	11 Ward No. 8, Circle No. 15.	Hafiz Hussain Lane	Do.
63	29 Ward No. 5, Circle No. 8.	Upper Clive Lane Road	Julam Sahabas of Mulana Dhak, Bhagalpur.
64	14 Ward No. 8, Circle No. 4.	Baddul Mussaim Lane	Do.
65	71 Ward No. 3, Circle No. 5.	Middle dive land Road, Adampur . . .	Dr. Wazul Haque of Musskchak, Bhagalpur.
66	36 Ward No. 8, Circle No. 14.	Mogalpur, Misjan Hat	Syed Ebrar Hussain s/o Late Bilai Hussain & Moghalpura.
67	6 Ward No. 4, Circle No. 7.	Kasimbaga Mohalla	Alla Bux s/o Late Saddo Khalifa of Kesimbag.

1	2	3	4
68	71 Ward No. 1, Circle No. 1.	Barari Road	Syed Gulam Mohiuddin and Syed Gulam Zilani, s/o Ata Hussain of Barari.
69	14 Ward No. 8 . .	Maiz Hussain Lane, Sikandarpur	Bibi Noor Zahan Begum w/o Somasul Haque, Sikandarpur.
70	26 Ward No. 2, Circle No. 4	Kudarat Hussain Lane, Brahmapura	Md. Sirajuddin.
71	51 Ward No. 2, Circle No. 4.	Mirleku Lane, Brahmapura	Sirajuddin.
72	54 Ward No. 2, Circle No. 4.	Do.	Do.
73	51 Ward No. 2, Circle No. 4.	Sahadat Hussain Lane, Brahmapura	Azizuddin.
74	15 Ward No. 2, Circle No. 4.	Kudarat Hussain Lane, Brahmapura.	Rosanara Begam.
75	123 Ward No. 2, Circle 4.	Do.	Do.
76	33 Ward No. 5, Circle No. 9.	Saray	Abdul Kuds Khan and Abdul Basid Khan s/o L. Kuramat Ali Khan of Sarai.
77	One house	Gani Chak	Nizamuddin of Ganichauk.
78	11 Ward No. 5, Circle No. 8.	Jabbar Chak	Bibi Akabari w/o Nabbi Bun of Taturpur.
79	18 Ward No. 5, Circle No. 8.	Logar Asilam Nath Nagar	Do.
80	8 (old) 10 (New) Ward No. 6 Circle No. 3.	Saliebganj	Latif Dhumia s/o Matu Nadeef, Sahabganj, Nath Nagar.
81	One house	Barari	Syed Gulam Mohiuddin and his wife Bibi Rabiya of Barari.
82	83/76 Ward No. 8 Circle No. 14.	Mussanabag	Md. Mohafazul Haque Winding Road, Hussaina Bag.
83	35 and 24	Mir Fekulane, Brahmapura	Kazi Kalimuddin.
84	6	Mirdhalane Barahapura .	Noor Hussain s/o Karamat of Brahmapura.
85	32	Vikhanpur Road	Abdul Kaimum Postman Vikhanpur.
86	31	Do.	Do.
87	1 Ward No. 1 Circle No. 1.	Nandlal Mishralane Khanjarpur	Abdul Hussain of Khanjarpur.
88	55 Ward No. 2 Circle No. 4.	Vikhanpur Road	Ayub Khan of Vikhanpur.
89	6	Do.	Do.
90	29	Do.	Do.
91	64	Do.	Do.
92	51	Do.	Do.
93	15	Do.	Do.
94	One house	Barahapura	Zamaluddin & Md. Siraj s/o L. Amir Bux of Brahmapur.
95	One house	Hussainabag	Bibi Wasim of Hussainabag.
96	One house	Mohaballichak	Nazib Khan, Nabiz Khan and Bazid Khan s/o L. Bhurar Khan of Mohabatoli chak.
97	One house	Chameli Chak	S.K. Taiyab.
98	Parati Plot	Khanjarpur	Md. Isaque s/o Rahim Mistry, Khanjarpur.
99	55 Ward No. 8 Circle No. 12.	Chameli Chak	Fakirullah.

[No. 1 (1222)/Comp. III/58.]

S.O. 198.—Whereas the Central Government is of opinion that it is necessary to acquire the evacuee properties in the schedule hereto annexed in the State of Bihar for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons;

Now, therefore, in exercise of the powers conferred by section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), it is notified that the Central Government has decided to acquire, and hereby acquires, the evacuee properties specified in the said Schedule.

THE SCHEDULE

Sl. No.	Name of Evacuee with address	Location	Holding No. & Wards No.	Remarks
1	Sk. Abu Bakar s/o Sk. Abdul Rahim, of Maulvi Tola, Madhubani, Purnea.	Maulvi Tola Madhubani, P.S. Khajanchi Hat.	H. No. 3, Ward No. 13.	
2	Gozu Ahammad s/o Abdul of Madhubani, Purnea.	Do.	II. No. 66, Ward No. 11.	
3	Do.	Madhubani Bazar, Purnea.	II. No. 67, W. No. 11.	
4	Do.	Maulvi Tola, Madhubani, Purnea.	II. No. 39, W. No. 9.	
5	Abu Ahammad, Supply Inspector, Madhubani, Purnea.	Do.	H. No. 28, Ward No. 9.	
6	Jakar Ah of Driver Tola, Katihar.	Driver Tola, Katihar	H. No. 48, W. No. 1.	
7	Maqbul Mian of Kalal Tola, Katihar.	Kalal Tola, Katihar.	H. No. 78, Keshra No. 159, Khata No. 89.	One katha of home stead land.
8	Sk. Rafique of Driver Tola, Katihar.	Driver Tola, Katihar.	H. No. 78/16, Ward No. 1.	
9	Ali Hussain s/o Md. Harif of Driver Tola, Katihar.	Do.	Ho. No. 269, Ward No. 1.	3 kathas of home stead land.
10	Khalil Mian of Driver Tola, Katihar.	Drivers Tola, Katihar.	H. No. 211, Ward No. 1.	
11	Noor Mohammad of Driver Tola, Katihar.	Do.	H. No. 268, Ward No. 1.	1 katha of home stead land.
12	Jamaruttan of Driver Tola, Katihar	Do.	H. No. 35, W. No. 1.	14 dhurs of home stead land.
13	Ekbal Ali of Larkania Tola, Katihar.	Larkania Tola, Katihar	H. No. 337, Ward No. 1.	
14	Karim Main of Larkania Tola, Katihar.	Do.	H. No. 256, Ward No. 1.	
15	Khalil Mian of Driver Tola, Katihar.	Katihar, Driver Tola	II. No. 393, Ward No. 1.	1 katha of home stead land.
16	Sk. Shamsul, Driver Tola, Katihar.	Do.	H. No. 336, Ward No. 1.	
17	Abdul Karim Khan, Drivers Tola, Katihar.	Do.	H. No. 335, Ward No. 1.	
18	Abdul Rahim of Driver Tola, Katihar.	Do.	H. No. 398, Ward No. 1.	2 kathas of home stead land.
19	Umram Mian of Driver Tola, Katihar.	Do.	H. No. 54, Ward No. 1.	
20	Ghani Muzzam, Mahalla Lane, Kishanganj.	Mahalla Lane, Kishanganj.	H. No. 77.	
21	Hahzuddin.	Kharagpur, Kishanganj.	Plot of one bigha.	

[No. 1 (1222)/Comp. III/58-Prop-A.]

R AJA LAL GUPTA, Under Secy.

(Office of the Chief Settlement Commissioner)

ORDER

New Delhi, the 15th January 1959

S.O. 199.—In exercise of the powers conferred upon me by sub-section (1) of Section 8 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), I, L. J. Johnson, I.C.S., Chief Settlement Commissioner, do hereby authorise the undermentioned Officers in Patiala and Jullundur regions to make payment of compensation to Displaced Persons, out of the compensation pool, by transfer of allotable property or otherwise in accordance with the provisions of Displaced Persons (Compensation and Rehabilitation) Rules, 1955, in addition to the Officers already authorised *vide* this Office Order No. F. 4(6) Comp-II/57, dated 10th October 1957, 19th December 1957, 27th February 1958 and Orders of even number, dated 22nd July 1958, 9th August 1958, 28th October 1958, 20th November 1958, 9th August 1958 and 22nd December 1958.

*Name of Officers**Patiala Region*

1. Shri M. M. L. Mathur, Settlement Officer, Karnal.
2. Shri R. D. Mathur, Assistant Settlement Officer, Patiala.

Jullundur Region

1. Shri Narain Singh, Assistant Settlement Officer.
2. Shri Mohan Kumar, Assistant Settlement Officer.
3. Shri L. H. Mulchandani, Assistant Settlement Officer.

[No. F. 4(6) Comp-II/57-Policy-I.]

L. J. JOHNSON,

Chief Settlement Commissioner.

MINISTRY OF LABOUR AND EMPLOYMENT*New Delhi, the 12th January 1959*

S.O. 200.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Nagpur in the industrial dispute between the employers in relation to the Dadabhoy New Chirimiri Ponri Hill Colliery Co. (P) Ltd., Civil Lines, Nagpur and their workmen represented by the Chhattisgarh Colliery Workers' Federation.

BEFORE SHRI P. D. VYAS, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR AT BOMBAY

REFERENCE (CGIT) No. 12 of 1958

ADJUDICATION BETWEEN

The Management of Dadabhoy New Chirimiri Ponri Hill Colliery Co. (P) Ltd., Nagpur

AND

Their workmen represented by the Chhattisgarh Colliery Workers' Federation.

In the matter of an industrial dispute relating to remodelling of labour quarters, appointment of a Doctor, payment of overtime wages, etc

APPEARANCES:

Shri A. S. Bobde, Advocate with Sarvashri M. L. Vaidya, Advocate, P. J. Registrar, Director of the Co. and R. S. Saraf, Secretary—for the Management.

Shri R. L. Malviya, M.P.—for the workmen.

AWARD

The employers in relation to the management of Dadabhoy New Chirimiri Ponri Hill Colliery Co. (P) Ltd., Nagpur and their workmen represented by the Chhattisgarh Colliery Workers' Federation having jointly

applied to the Central Government for reference of an industrial dispute between them to a Tribunal and the Central Government being satisfied that the said Chhattisgarh Colliery Workers' Federation represents a majority of the workmen, in exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947 it has referred the said dispute for adjudication to me.

4. The dispute relates to the matters set forth in the said joint application of the parties and reproduced in the schedule annexed to the Government order of reference No. LR11/2(29)55, dated 26th August 1958.

THE SCHEDULE

1. *Remodelling of labour quarters.*—Interpretation of word 'remodelling' in agreements, dated 24th January 1954, 8th November, 1954, 21st March 1955 and 6th August 1955.
2. *Appointment of one M.B., B.S. Doctor.*—Whether the appointment of one M.B., B.S. doctor contemplated in agreements, dated 21st March 1955 and 6th August 1955 is in addition to the existing doctor.
3. (A) *Payment of overtime wages.*—(a) Whether the employees who were on pay-rolls of the colliery between 1st October 1950 to 21st March 1955 (out of those who entered into service from 1st October 1950 to 8th November 1954) and have ceased to be employees of the colliery (both company and the contractors) for any reason whatsoever before 21st March 1955, are eligible to overtime payment, under the agreements, dated 21st March 1955 and 6th August 1955.
(B) Whether Chintaman shot-firer is entitled to overtime payment under agreements, dated 21st March 1955 and 6th August 1955.
4. A. *Increase of 12½ per cent. on the basic wages.*—(a) Whether the weekly paid employees who have been paid 12½ per cent. increase on basic wages from 7th August 1955 are eligible for arrear of payment of such increase for the period of their service from 1st October 1950 or the dates of their appointments to 6th August 1955 under the agreements, dated 21st March 1955 and 6th August 1955;
(b) Whether the monthly paid employees who were on pay-rolls of the Company or raising contractors between 1st October 1950 to 8th November 1954 but have ceased to be employed prior to 21st March 1955 are eligible for arrear payment of 12½ per cent. increase in basic wage under the agreements, dated 21st March 1955 and 6th August 1955.
(c) Whether the shot-firers are eligible for 12½ per cent. increase in basic wages from 1st October 1950 or dates of their appointments under agreements, dated 21st March 1955 and 6th August 1955.
(d) Whether the agreements, dated 21st March 1955 and 6th August 1955 regarding 12½ per cent. increase in basic wages are applicable to the colliery's office staff at Nagpur.
5. To what extent Shri Brilal, Car driver and Shri A. K. Sirkar, Electric Chargeman are entitled to overtime payment under agreements dated 21st March 1955 and 6th August 1955.
6. What is the extent to which lighting arrangements in labour quarters have been contemplated under agreements, dated 21st March 1955 and 6th August 1955.
7. How the recommendations of the Enquiry Committee submitted on 12th February 1955 and referred to against Item 5 of the agreement, dated 21st March 1955 are to be followed.
8. What should be the principle of re-imbursing the cost of medicine to the employees who purchase the same from outside according to agreement, dated 24th January 1954.
9. Whether the stopping of the increment of present doctor is justified in view of the agreement, dated 6th August 1955.
3. On the usual notices being issued, the President, Chhattisgarh Colliery Workers' Federation has filed the statement of claims on behalf of the workmen and the Secretary, Dadabhoys New Chirimiri Ponri Hill Colliery Co. (P) Ltd. has filed the written statement on behalf of the said company. The reference has been made in pursuance of a joint application of the parties for that purpose

and it relates to the interpretation of certain agreements arrived at between the parties from time to time in respect of the matters set forth in the schedule to the Government order of reference.

4. The colliery first started about the year 1940 and it then belonged to Sir Dadabhoi Manckji. In 1944 it was sub-leased to the Government of India and remained under the possession of the Government till 30th September 1950. The present proprietors resumed possession on 1st October 1950 and since then they are working the colliery. The employees engaged during the time of the Government management, were since after 1950 either retrenched or taken back by the Government to their own collieries or they left. The dispute between the parties first originated in the year 1954, when the employers were served with a strike notice on 11th January 1954. At that time they arrived at an agreement, dated 24th January 1954. Then again the second strike notice was given to the employers on 18th October 1954 which was followed by a conciliation and ultimately there took place a settlement, dated 6th November 1954 between the parties. The date for this settlement seems to be 6th November 1954 and not 8th November 1954 as shown *infra*. The third strike notice was served on the employers on 23rd January 1955 to go on strike from 13th March 1955. The strike as scheduled in the notice did take place and ultimately the strike was withdrawn on an agreement between the parties dated 21st March 1955. It appears that there arose some difference between the parties on the implementation of this agreement and hence there was another agreement, dated 6th August 1955 between them. These are mainly the agreements which will be referred to hereinafter as and when necessary in considering the various demands.

5. Demand No. 1—*Remodelling of labour quarters*.—Under this demand we are required to interpret the word 'remodelling' with reference to the agreements, dated 24th January 1954, 6th November 1954, 21st March 1955 and 6th August 1955. There are about 1,100 labour quarters comprised of several Blocks and the same were constructed during the time when the Government was in-charge of the colliery. I was told that these are one room tenements of 10' x 10' and in one Block there are six such rooms occupied by six families. The first agreement in this connection is dated 24th January 1954, Ex. U-3 where the clauses Nos. 7 and 8 provide:

"7. Remodelling of labour quarters on modern standard by providing adequate accommodation, construction of windows, doors and addition of verandahs, latrines, baths and courtyards, etc., and

8. Adequate arrangement of quarters for the monthly paid workers and extension of artisan quarters:

The Colliery will adopt a general policy agreed to by the employers' Organisations and implement the same as and when funds become available for the purpose."

6. The next agreement referred to in the demand No. 1 is dated 8th November 1954 and Shri Malviya while opening his case stated that this was the agreement which took place during the conciliation after the strike notice, dated 18th October 1954. From the copy, Ex. C.5 produced by the management, it appears that the agreement in question is dated 6th November 1954, where the clause No. 11 refers merely to sufficient arrangement for urinals and latrines in the labour dhauras and it provides that:

"Application has already been made to the Chief Inspector of Mines in India, Dhanbad for sanction of type and size of the urinals and latrines. The management agreed to take necessary action as soon as they get sanction from the Mines Department."

7. The next agreement is dated 21st March 1955, Ex. U-1 where the clause No. 4 refers to the aforesaid clauses Nos. 7 and 8 of the first agreement, dated 24th January 1954 for "remodelling of labour quarters on modern standard, etc., etc., and adequate arrangement of quarters" and lays down as under:—

"Efforts are being made for remodelling of the labour quarters. The management has for the time being sanctioned the construction of one block consisting of 2 units to begin with.

The management applied to the Deputy Commissioner, Surguja, for surface right about three years ago but upto this time the only reply we received after reminder is that the matter is receiving attention. On receipt of the surface right efforts will be made to construct workers' quarters. The case will be referred to the Regional Labour Commissioner (Central), Nagpur for necessary action."

8. The last agreement on the point is dated 6th August 1955, Ex. U-2. There under clause No. 4 on the question of "remodelling of labour quarters on modern standard, etc, and adequate arrangement of quarters", it has been laid down:

"Efforts are being made for remodelling of labour quarters.

Regarding adequate arrangement of quarters, the management has for the time being sanctioned the construction of one block consisting of two units to begin with as soon as the surface rights are granted by the Government. This satisfies the labour Federation."

9. The demand No. 1 as it stands is for the interpretation of the word 'remodelling' as used with reference to the labour quarters in the aforesaid agreements. If this also includes the question of adequacy of the existing quarters, then the last agreement dated 6th August 1955 is clear on the point that regarding adequate arrangement of quarters, the management has for the time being sanctioned the construction of one block consisting of two units to begin with as soon as the surface rights are granted by the Government and this satisfies the labour Federation. The employers' representative also pointed out that the life of this colliery is till 1971 A.D., the lease having been sanctioned upto that year and that they can build only on an area where there is no coal underground. It is not thus possible for them to have any definite housing programme within the time limit. Whatever it may be, in my opinion the question of remodelling of labour quarters under the demand No. 1 mainly refers to the remodelling of the existing labour quarters. Shri Malviya also at the time of the hearing frankly conceded that remodelling does not mean construction of additional quarters and in so far as the demand No. 1 is concerned, what they say is that the existing quarters should be so remodelled as to provide for the various amenities.

10. Though the last two agreements dated 21st March 1955 and 6th August, 1955 merely say that efforts are being made for remodelling of labour quarters without specifying what exactly this remodelling is to be, the first agreement dated 24th January, 1954, is clear on the point when it speaks of "remodelling of labour quarters on modern standard by providing adequate accommodation, construction of windows, doors and addition of verandahs, latrines, baths, and courtyards, etc." In this connection the second agreement dated 6th November 1954 further speaks of sufficient arrangement for urinals and latrines regarding which the management agreed to take necessary action as soon as they got sanction from the Mines Department. It appears that the existing one room tenements of 10' x 10' with only one door as originally constructed lacked all the amenities on modern standard. No room was provided with any verandah or window and except a few water taps which are quite inadequate looking to the number of the quarters, there are no latrines nor water pipe connections.

11. After the first agreement dated 24th January 1954 the employers have done nothing except the construction of windows which were not there before in the labour quarters, all of which by this time have admittedly got windows. The employers in their written statement contend that looking to the existing situation of the labour quarters, the demand as made in the name of so-called remodelling is unrealistic and when the question of re-modelling was raised by the Union what the management agreed was to construct a window to each of the rooms as that was the only practical solution to remodel the rooms as they are. They allege that any other type of additions or alterations are not practicable nor were agreed. According to them therefore the interpretation of the word 'remodelling' means providing window to each of the rooms. If this was the understanding between the parties, the clause No. 7 in the first agreement dated 24th January 1954 and the clause No. 11 in the agreement dated 6th November 1954 would not have been worded as they are. The remodelling in the said clause No. 7 of the first agreement is not confined to the mere construction of windows but it speaks in clear terms of remodelling of labour quarters on modern standard, by providing adequate accommodation, construction of windows, doors and addition of verandahs, latrines, baths, and courtyards, etc. Then the necessary arrangement for urinals and latrines has been further provided for in the said clause No. 11 of the second agreement. In view of the agreements as they stand, it would be entirely wrong on the part of the employers to say that what they agreed to do was merely construction of windows.

12. In the statement of claims it has been alleged that the remodelling as agreed under the first agreement dated 24th January 1954 meant that the labour quarters were to be remodelled on modern standard which included (1) provision of adequate accommodation by addition of one more room to each unit; (2) construction of windows in the existing one room quarter; (3) addition of doors and

verandahs to each quarter; (4) construction of latrines; (5) bath and (6) courtyard. It has been further alleged in the statement of claims that the use of the word 'etcetera' goes to make the agreement still more comprehensive so as to include the provision of electric light and water tap in each quarter. At the time of the hearing Shri Malviya pointed out that (1) every Block should have a verandah; (2) one additional room with a door in between should be constructed so that each tenement consists of two rooms instead of one and this may be done in the course of five years; (3) there should be sufficient number of latrines, say about 100, looking to the 6000 population of the workers; and (4) there should be one water tap for each Block. For the purposes of remodeling, Shri Malviya pressed only these four items and in my opinion the employers should have no objection to accept this interpretation, though the word 'remodelling' as used in the clause No 7 of the first agreement dated 24th January 1954 includes still further items. I do not think that if there were any practical difficulties, the management would have accepted the wording as used in the agreements. My function is to interpret the word 'remodelling' in the agreements, the contents whereof reproduced as aforesaid leave no doubt as to what is meant thereby. In so far as the water taps and latrines are concerned, the parties have agreed that there should be one latrine for every 100 persons occupying labour quarters and that there should be one water tap per two Blocks. As for the remaining two items, viz. providing each Block with a verandah and construction of additional one room with a door in between so as to convert the existing one room tenement into two room tenement, I hold that they are covered under the term 'remodelling' as used in the agreements between the parties, especially when the aforesaid clause 7 of the first agreement in terms speaks of the provision of adequate accommodation and addition of verandahs.

13. *Demands Nos. 2 and 9.*—These two demands can conveniently be considered together. At present there is a Doctor but he is not M.B.B.S. and hence under the demand No. 2 regarding appointment of one M.B.B.S. Doctor, the point has been raised as to whether the appointment of one M.B.B.S. Doctor contemplated in agreements dated 21st March 1955 and 6th August 1955 is in addition to the existing Doctor. Admittedly no M.B.B.S. Doctor has been appointed so far and hence under the demand No. 9 the point raised is as to whether the stoppage of increment of the present Doctor is justified in view of the agreement dated 6th August 1955.

14. The clause 11 of the agreement dated 21st March 1955, Ex. U-1 refers *inter alia* to the appointment of one M.B.B.S. Doctor for Colliery Hospital. This was the demand No. 8 in the strike notice dated 18th October 1954 and the said clause 11 provides thus:

"It is agreed that a Doctor will be appointed and the management is already on the look out. The Federation should help the management to find out a suitable Doctor."

Again in the next agreement dated 6th August 1955, Ex. U-2, clause 11 on the appointment of M.B.B.S. Doctor for Colliery Hospital provides thus:

"It is agreed that the company should make all efforts to make arrangement for a suitable quarter and as soon as this is done should appoint an M.B.B.S. Doctor. With the help of the Federation, attempt will be made to reshuffle the occupants of the existing quarters and make a suitable quarter available for the Doctor. For this purpose, if necessary, the management would be prepared to add one room to one of the junior quarters. This satisfies the Labour Federation."

15. It will be seen from the relevant provisions in the said two agreements that they do not in terms speak of the appointment of M.B.B.S. Doctor in place of the present Doctor. If it were so, there could arise no difficulty in providing the new Doctor with residential quarters, inasmuch as the quarters occupied by the existing Doctor would be made available to him with necessary alterations, if any. It has therefore rightly been pointed out in the statement of claims on behalf of the workers that if the intention had been to substitute the existing Doctor who is not M.B.B.S. the question of re-shuffling of the occupants of the existing quarters would not arise. On behalf of the employers, it has been contended that they agreed to appoint an M.B.B.S. Doctor only in place of the present Doctor who is not an M.B.B.S. one and that the Coal Mines Labour Welfare Fund Rules, 1949 provide for only one Doctor in a standard dispensary. Looking to the agreements between the parties, it is not open to the employers to fall back upon any such rules and what under the reference I am required to do is to interpret the agreements as they are.

16. The employers' representative argued that the agreements do not provide for the appointment of an additional Doctor and in fact there is need for two Doctors. It was however up to the employers to see that the agreements were worded in proper terms and if they thought that there was no need for an additional Doctor or that the new M.B.B.S. Doctor was to be appointed in place of the existing Doctor, it should have been so expressly provided in the agreements. It may be noted that the appointment of a new Doctor in place of the existing Doctor means dispensing with the services of the old Doctor and in such a case an express provision to that effect was absolutely necessary in the agreement which however does not find place there. Thus taking the two agreements as they are, the management is required to appoint a new M.B.B.S. Doctor and the agreements by themselves do not warrant or permit the discontinuance of the existing Doctor. If it is the plea of the employers that the two Doctors are not required it will be for them to make out a case for retrenchment by independently establishing that the old Doctor has become surplus on and after the appointment of the new M.B.B.S. Doctor.

17. It was next urged on behalf of the employers that the reference in this connection is incompetent inasmuch as a Doctor is not a workman within the meaning of that term as defined in S.2(s) of the Industrial Disputes Act, 1947. In the first place the reference has been made under S.10(2) of the Act on a joint application of the parties and it is rather doubtful if the employers can now after the Government Order of reference urge that any part of it is incompetent. The employers themselves have produced a copy of the said joint application together with the copy of the statement attached thereto (Exs. C-8 and C-9) and in the joint application it is stated:

"Whereas an industrial dispute is apprehended between the Dadabhoj New Chirimiri Ponri Hill Colliery Company (Private) Ltd., and the Chhat-tisgarh Colliery Workers' Federation, Chirimiri and it is expedient that the matters specified in the enclosed statement which are connected with or relevant to the dispute should be referred for adjudication by a Tribunal, an application is hereby made under section 10(2) of the Industrial Disputes Act, 1947 that the said matters should be referred to a Tribunal. This application is made by the undersigned who have been duly authorised to do so. A statement giving the particulars required under rule 3 of the Industrial Disputes (Central) Rules, 1957, is attached."

18. Moreover along with the definition of term 'workman' in S.2(S) of the Act, we have to read S.2(K) where the expression 'industrial dispute' has been defined. In this connection reference may be made to the recent judgment of the Supreme Court in the case of Assam Chah Karmachari Sangha vs. Dimakuchi Tea Estate, 1958 I.L.L.J. 500 in which their Lordships have observed that where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised, need not be, strictly speaking a 'workman' within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest. In interpreting the expression 'any person' in S.2(K) of the Act in a dispute relating to a person who is not a workman within the meaning of S. 2(S) of the Act their Lordships have laid down that 'any person' in S. 2(K) means a person in whose employment or non-employment or terms of employment or conditions of labour the workmen as a class have a direct or substantial interest—with whom they have, under the scheme of the Act, a community of interest. Having regard to the scheme and object of the Act and its other provisions, the expression 'any person' in S.2(K) of the Act must be read subject to such limitations and qualifications as arise from the context; the two crucial limitations are:—(1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause), so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other; and (2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Both these conditions are satisfied in the present case and when the Federation representing a majority of workmen and the employers have jointly applied to the Government for a reference for adjudication of a dispute relating inter alia to the appointment of an M.B.B.S. Doctor as well as to the stoppage of the increment payable to the present Doctor, it means that this is a real dispute between the parties capable of settlement or adjudication by one party to the dispute giving necessary relief to the other and the person,

i.e. the Doctor regarding whom the dispute is raised is one, in whose employment so far as the new Doctor is concerned, and in whose terms of employment and conditions of labour so far as the existing Doctor is concerned, the parties to the dispute have a direct or substantial interest. This is therefore an industrial dispute regarding which it was competent to the Government to make a reference under S.10(2) of the Act on a joint application of the parties.

19. In the circumstances discussed above, I hold that the agreements dated 21st March 1955 and 6th August 1955 do not contemplate the appointment of one M.B.B.S. Doctor in place of the existing Doctor nor do they warrant the discontinuance of the present Doctor on the appointment of the new M.B.B.S. Doctor. I further hold that so long as the present Doctor continues in employment, it is not open to the management to stop his increment if otherwise due in normal course and no such act is justified in view of the agreement dated 6th August 1955.

20. Demand No. 3.—This demand relates to the payment of overtime wages and is sub-divided into two parts, (a) and (b). The first part is concerning the employees who were on pay-rolls of the colliery between 1st October 1950 to 21st March 1955 and have ceased to be employees of the colliery (both company's and the contractors') for any reason whatsoever before 21st March 1955. These are the employees out of those who entered into service from 1st October 1950 to 8th November 1954 and the question of their eligibility to over-time payment is to be judged under the agreements dated 21st March 1955 and 6th August 1955. The second part (b) of the demand is whether one individual employee named Chintaman Shot-flr is entitled to over-time payment under the same agreements, viz. dated 21st March 1955 and 6th August 1955.

21. The provision regarding the payment of over-time wages starts with clause 2 of the first agreement dated 24th January 1954 (Ex. U-3). It is there stated:

"Payment of overtime to workers for overtime work done on rest days, holidays, and other days at one and a half times in addition to monthly salary in case of monthly paid workers and at one and a half times in the case of weekly paid workers, with retrospective effect." "The Union will give details with the help of the records of the company of the number of hours of overtime work including Sunday over-time, and calculations and payments will be made on the basis of such extra hours booked to have been worked. This will come into effect from 1st October, 1950."

It is with reference to this that under clause 16 of the agreement dated 21st March 1955 (Ex. U-1), we find the following provision under the heading "Demand No. 2 of the Agreement dated 24th January 1954: Payment of overtime to workers for work done on Sundays, holidays, rest days and other days in addition to normal duty hours at 1½ times in addition to monthly salary in case of monthly paid workers and at 1½ times in case of weekly paid workers":—

"It is agreed that the payment of overtime of monthly paid staff will be paid on the following basis:

- (a) For the period from 1st October 1950 to 30th June 1952 on the basis of Standing Orders.
- (b) For the period from 1st July 1952 to 24th August 1954 on the basis of the Mines Act, 1952.
- (c) For the period from 24th August 1954 onwards the categories exempted from Chapter VI of the Mines Act, 1952 will be governed by the Standing Orders and the other categories by the Mines Act, 1952. The period of Sunday and/or holiday work in case of monthly paid employees will be ascertained on the basis of total number of days shown in the Pay Sheets less working days, leave, sick, off and absent as shown in the Pay Sheets.
- (d) If any (OFF) against the Sunday work or overtime work is already availed and shown in the monthly Pay-sheets by (O) or (OFF) it will be deducted from the total period of overtime due and the balance will be paid for.
- (e) Every Sunday attendance and the attendance on a holiday will be counted as ¾ (4 hours) for calculating the amount of overtime.
- (f) The payment of overtime will consist of basic rate of salary, dearness allowance, bonus and grain allowance (grain allowance from 1st July 1952 only).

- (g) As for weekly paid employees grain allowance for the overtime period of work should be paid for the period from 1st July 1952 onwards at overtime rate.
- (h) For the period prior to 1st July, 1952 if any worker has put in 9 hours work in a day or 54 hours in a week instead of 8 hours in a day and 48 hours in a week of six days, he will be paid at the overtime rate for the 50 per cent extra hours of work put in."

22. The next agreement in this connection dated 6th August 1955 (Ex. U-2) provides as follows under the clause 16 with the heading "Payment of overtime to workers for work done on Sundays, holidays, rest days and other days in addition to normal duty hours at $1\frac{1}{2}$ times in addition to monthly salary in case of monthly paid workers and at $1\frac{1}{2}$ times in case of weekly paid workers":—

- (i) Agreement dated 21st March, 1955 relating to this item has been completely implemented in case of all monthly paid workers paid directly by the Company.
- (ii) It is now agreed that in case of monthly paid workers exempted under S.R.O. 2804, dated 24th August, 1954 and who are marked 'P' in the pay-sheet for Sunday work for the period from 25th August, 1954 to 31st March, 1955, a further payment equal to one fourth day's wages (Basic plus dearness allowance) will be made for Sunday attendance during this period as per sub-clause (e) under this item.
- (iii) Pay-sheets under clause (h) of this item of agreement dated 21st March 1955, for workers directly paid by the company, are under checking and will be offered for payment as early as possible. This refers to weekly paid workers only who alone are entitled under this clause.
- (iv) It is also agreed that such weekly paid chowkidars and sweepers, exempted under S.R.O. 2804, dated 24th August, 1954, as are marked 'P' in the pay-sheet for Sunday work during the period 25th August, 1954 to 31st March, 1955 will be given a further payment equal to one-fourth day's (basic plus D.A.) wages for Sunday attendance during this period.
- (v) As regards inclusion of the grain allowance in the wages for payment of overtime as per Mines Act, as a difference of opinion about the interpretation of this point has arisen between the Management and the Federation, it is agreed that the matter be referred by the Management to the Chief Inspector of Mines for his clarification. On receiving this clarification, if it is favourable to the workers, the Management agrees to pay to them for grain allowance for overtime accordingly for the current period and as well as for the period commencing from 4th October 1953. If the clarification is otherwise, then the Federation will have no claim in this respect.
- (vi) Payments of overtime both to the monthly paid and weekly paid workers of the Raising Contractors will be made on the same basis as have been and are being made to the workers directly paid by the company under clause (a) to (h) of item 16 of the Agreement, dated 21st March 1955 and also as agreed above.
- (vii) The payment of overtime to the workers who are exempted from Chapter 6 of the Mines Act, 1952, and who are marked 'P' for Sunday work in the pay-sheets will be made according to the Standing Orders for Sunday work from 1st April, 1955 onwards till the standing orders are modified in this respect. This agreement will not be cited as a precedent after such modification.

The Federation is fully satisfied with the mode of preparation of pay-sheets prepared in respect of overtime payment for Sunday work etc.

After the payments now agreed under clauses (ii) to (vi) above are made, the Federation will have no further claim in these respects upto 31st March, 1955."

23. Taking up first the question of overtime payment under the part (a) of this demand, the case on behalf of the workers in the statement of claim is that the Colliery was under the control and management of the Government of India for a period of five years prior to 1st October 1950 and the present employers

assumed management with effect from 1st October 1950. During its charge the Government had brought some of its employees from other collieries to this colliery for purposes of better and efficient working and besides, an extra staff was also recruited. When the present management assumed charge, the Government staff was re-transferred and a large number of employees were retrenched between 1st October 1950 and 21st March, 1955 or some of them left the colliery for other reasons. All the same, such of these employees who earned overtime/ payment during their employment in the Colliery within the stipulated period were entitled to get it, whether they were in the employment of the colliery on the date of the agreement, i.e. on 21st March 1955 or not. Nowhere in any of the agreements these employees have been excluded and hence those who were on payrolls of the colliery between 1st October 1950 to 21st March 1955 and have ceased to be employees (both company's and contractors') for any reason whatsoever before 21st March 1955, are eligible to overtime payment under the agreements, dated 21st March 1955 and 6th August 1955. Thus the claim for overtime payment under this part of the demand refers to certain ex-employees alleged to have worked overtime during their employment but have ceased to be the employees for one reason or the other on the dates when the agreements in question were made, namely 21st March, 1955 and 6th August 1955. The management however by its written statement contends that the agreement, dated 21st March 1955 benefits only those workmen who were in the employment of the company on that date, namely 21st March 1955. According to the management therefore, those employed between the period from 1st October 1950 to 8th November 1954 and who ceased to be employees of the colliery before 21st March 1955 are not entitled to claim the payment of overtime wages, as on the date of the agreement they were not in the service of the company. The management alleges that they were neither parties to the strike notice nor to the agreement arrived at on 21st March 1955 and hence the Federation has no *locus standi* to represent them.

24. As said above, the dispute between the parties first started with the strike notice dated 11th January 1954. The demand No. 2 in the said strike notice related to payment of overtime to workers for overtime work done on rest days, holidays and other days at $1\frac{1}{2}$ times in addition to monthly salary in case of monthly paid workers and $1\frac{1}{2}$ times in the case of weekly paid workers, with retrospective effect. It was with respect to this demand that in the subsequent agreement dated 24th January 1954 the above-said arrangement was made, namely that the Union will give details with the help of the records of the company of the number of hours of overtime work including Sunday overtime, and calculations and payments will be made on the basis of such extra hours booked to have been worked and this was to come into effect from 1st October 1950. The second strike notice given thereafter is dated 18th October 1954 and there one of the reasons given for the strike was non-implementation of the said agreement dated 24th January, 1954 between the management and the workmen. The parties then arrived at the agreement dated 6th November 1954 and thereunder item No. 1(c) we find the following provision regarding the payment of overtime with retrospective effect.

"As regards this, there was disagreement as to the record from which the overtime should be calculated. It is now agreed that the overtime payment should be calculated on the basis of the entries in the pay-sheets. For the purpose of overtime payment it is agreed that four hours extra will be taken as overtime work and the payment will be made accordingly. This payment of overtime will be made from 1st October 1950 at one and half times normal basic plus dearness allowance to monthly paid employees in addition to monthly salary and one and half times normal basic plus dearness allowance to weekly paid employees.

After 1st July 1952 overtime will be paid to employees working on surface or underground as per Mines Act, 1952.

Payment will be made before the end of the 1st week of December 1954"

Then followed the two agreements dated 21st March 1955 and 6th August 1955, the relevant provisions whereof in respect of overtime work have been quoted above.

25. It will be seen from the agreements as they are that beyond giving the date for retrospective effect and the mode of payment during the different periods, it is nowhere laid down in any express terms as to who are the employees covered under these agreements. Shri Malviya at the time of the hearing pointed out that the claim under this demand is confined only to those workers (both company's and contractors') who were not paid overtime though entitled and these

are the workers who entered into service from 1st October 1950 to 8th November 1954 and left the same before 21st March 1955 for one reason or the other. According to him, the period of payment in their case will be from the date of joining till the date on which they left, i.e. not earlier than 1st October 1950 and not later than 21st March 1955. He argued that the agreements are not restricted to any particular workers entitled to overtime payment and hence all including these ex-employees are covered. Shri Bobde on behalf of the employers on the other hand strenuously urged that the two agreements in question do not cover the employees who ceased to be as such prior to 21st March 1955 and at the time of the strike notice or of the subsequent agreements, the Union is not supposed to represent or to act for the employees who had already left and had ceased to be as such. He added that the dispute was never raised in terms with regard to the ex-employees and that the payment as agreed in respect of the workers on roll on 21st March 1955 had already been made. He pointed out that with regard to the ex-employees it would be a question of arrears and in their case there cannot be anything like retrospective effect as such. The provision under the agreements is made with respect to those who were then in employment and who had to be paid at a certain rate with retrospective effect from a certain date namely 1st October 1950. He argued that when all the agreements have been made in pursuance of the strike notices, it is improbable that the Union would omit to include ex-employees with an express claim to past arrears on their behalf if really it i.e. the Union thought of advancing any such claim.

26 Looking to the history of the dispute and the documents referred to above, we do not find at any time any specific claim for arrears of overtime payment expressly made in respect of these ex-employees. It is true that the two agreements include all the employees (both company's and contractors') and lay down certain mode or rates of payment of overtime wages for different periods with effect from 1st October 1950 but at the same time if the claim of ex-employees for non-payment of arrears was meant to be advanced and covered under these agreements, it should have been so specifically provided for. Ordinarily taking the agreements as they are, only those in the employment of the company then would be entitled to the benefit thereof with the retrospective effect from the date there laid down. This does not mean that the ex-employees are not entitled to claim their arrears of overtime payment, if any, if they are otherwise eligible to the same but for that purpose they would have to seek such other independent remedy as may be open under law. And the agreements being silent on the point, they are in no way debarred from doing so. What I am called upon to decide under this part of the demand is whether these ex-employees are eligible to overtime payment under the agreements dated 21st March 1955 and 6th August 1955, and I have to answer in the negative as taking the agreements as they are these ex-employees are not there expressly or impliedly covered. I hold accordingly.

27. The next part of the demand is with respect to the individual worker Chintaman Shot-firer who was in employment in the capacity of a shot-firer, since before 1st October 1950. In the statement of claim it is alleged that he was suspended on 29th September 1954 for committing an act of misconduct, but ultimately the suspension was found unjustified and he was therefore reinstated without back wages. This however does not mean that he should not get the overtime payment which he earned during his employment. Shri Malviya stated that this worker was reinstated in June 1955 at which time only the back wages from the date of suspension up to the date of reinstatement were given up but his claim for overtime payment during the period 1st October 1950 to 29th September 1954 remains unaffected. In the written statement filed by the employers, it is contended that he was under suspension on the date of the agreement, i.e. on 21st March 1955. He was thus not an employee of the company on that date and he is therefore not entitled to the benefit of overtime wages as per the agreements dated 21st March 1955 and 6th August 1955. At the time of the hearing Shri Bobde on behalf of the employers alleged that this worker was subsequently re-employed in June 1955 and not reinstated.

28. In my opinion the stand taken by the employers in this connection is unjustifiable. Whatever may be the charge against this worker, he was merely suspended pending enquiry and in the strike notice dated 18th October 1954 under the item No. 7, the dispute was raised *inter alia* regarding his wrongful suspension. Under the agreement dated 21st March 1955 the clause No. 7(c) relates to him and it is there agreed that:—

"if he returns to the colliery within a month from the date he will be given his original job. No question of any claim arises."

It is not there stated that he was to be re-employed as a fresh employee and what has been agreed is to give him his original job. During the period of suspension the employer-employee relation does subsist and the point regarding a suspended worker is made clear in Master and Servant—Barwell & Kar, by quoting at page 328 the following observations of Cotton L.J. in *Boston Deep Sea fishing and Ice Company V. Ansoll*, 39 Ch. D. 339 C.A:

“Suspension is very different from dismissal.....when a man is suspended from the office he holds, it is merely a direction that so long as he holds the office, and until he is legally dismissed, he must not do anything in the discharge of the duties of the office.”

If therefore this worker had during the relevant period earned any overtime payment, there is no reason why he should not get the benefit of the agreements in question. It is true that in the said clause 7(c) it is mentioned that no question of any claim arises but this does not mean, in the absence of any express provision to that effect, that the claim for overtime was also given up. Under the agreement a worker who was wrongfully suspended was to be put back on his original job and what seems to have been given up is the payment of wages for the period of suspension. I therefore hold that Shri Chintaman, Shot-firer is entitled to overtime payment under the agreements dated 21st March 1955 and 6th August 1955, if otherwise due to him.

29. *Demand No. 4.*—This demand relates to increase of 12½ per cent on the basic wages and is sub-divided in parts (a) to (d). The weekly paid employees have already been given 12½ per cent increase on basic wages from 7th August 1955 and under the sub-part (a) the claim raised is whether they are eligible for arrear of payment of such increase under the agreements dated 21st March 1955 and 6th August 1955 for the period of their service from 1st October 1950 or the dates of their respective appointments to 6th August 1955. The sub-part (b) concerns monthly paid employees who were on pay-rolls of the company or raising contractors between 1st October 1950 to 8th November 1954 but have ceased to be employees prior to 21st March 1955 and the point raised is whether they are eligible for arrear payment of 12½ per cent increase in basic wages under the agreements dated 21st March 1955 and 6th August 1955. A similar claim is made for shot-firers under the sub-part (c) by raising the point whether they are eligible for 12½ per cent increase in basic wages under agreements dated 21st March 1955 and 6th August 1955 for the period from 1st October 1950 or dates of their respective appointments. The sub-part (d) concerns the colliery's office staff at Nagpur and the point raised is whether the agreements dated 21st March 1955 and 6th August 1955 regarding 12½ per cent increase in basic wages are applicable to this office staff.

30. The 12½ per cent increase referred to above is payable under what is popularly known as Korea Award (*vide* the copy Ex. C11). Under clause 1 thereof certain minimum basic rates of wages have been prescribed for certain categories of workers there specified. The clause 2 with which we are now concerned provides that:—

“Any class of employees not entitled for any increase in wages under the provisions given above may be granted an increase of 12½ per cent in their basic pay”

and under Clause 11 this order is directed to apply retrospectively with effect from 1st November, 1947. The point regarding this 12½ per cent increase was first raised in the strike notice dated 11th January 1954 under the following terms *viz.*:—

“Non-implementation of the Korea Award in respect of increment of 12½ per cent in the basic wages of the workers with retrospective effect”

and at the time of the subsequent agreement dated 24th January 1954 the clause 3 thereof provided thus:

“Non-implementation of Korea Award in respect of increment of 12½ per cent to the workers with retrospective effect:

According to the employers the claim refers to a period when the colliery was in charge of Government and not of the present company. The company recruited its men at certain salaries on the 1st of October 1950 and therefore the award does not apply to the Company.

The Federation suggested that these workers who are in continuous employment of or were in the employment at the time of the application of Korea Award were entitled to 12½ per cent increment with retrospective effect.

The matter will be got clarified from Government."

Again in the second strike notice dated 18th October 1954 the dispute was raised regarding the non-implementation of the Korea Award in respect of payment of increment of 12½ per cent in the basic wages of the workers and the subsequent agreement dated 6th November 1954 under the item No 4 (Ex. C5) stood thus:—

"It is agreed that the claim of the workers for 12½ per cent increase in the basic wages as per Korea Award, with effect from 1st November 1947 should be examined by the Regional Labour Commissioner (Central) Nagpur, and his recommendations communicated to the parties, who hereby agree to accept the same, to be effective from such date on or after 1st October 1950 as he may recommend. As regards the date from which the increase of 12½ per cent has to be given by the contractors to their staff, the same will be recommended by the Regional Labour Commissioner (c), Nagpur which may be effective from or after 1st November 1947."

31. This brings us to the two agreements dated 21st March 1955 and 6th August 1955 referred to in the present demand. The agreement dated 21st March, 1955 under its clause 17 lays down:

"Demand No. 3 of the Agreement dated 24th January 1954: Non-implementation of the Korea Award in respect of increment of 12½ per cent in the basic wages of the workers with retrospective effect:

It is agreed that the workers who were on the pay-rolls of the company on 1st October 1950 will be given an increase of 12½ per cent in the basic wages prevailing on 1st October, 1950.

Those workers, who came after 1st October 1950 to the date of agreement, i.e. 8th November 1954 will be given the increment of 12½ per cent, in their basic wages prevailing on the date of their joining.

The Federation also agrees to forego one third of the total amounts thus payable to the workers.

The above provision will not be applicable to those workers whose wages have been fixed by the Korea Award."

Then the clause 17 of the agreement, dated 6th August 1955 provides thus:

"Non-implementation of the Korea Award in respect of an increment of 12½ per cent. in the basic wages of the workers with retrospective effect:

It is now agreed that any increments given from time to time either as increments in the same post or increments by promotion to higher post will not be adjusted by the management in case of monthly paid staff against 12½ per cent increase in the initial basic salary and the maximum of grades given to certain individuals at present may ultimately exceed by 12½ per cent of the initial salary of that individual's grade.

Bonus on those arrears is to be calculated and paid subject to the deduction of 1/3rd from the total amount payable as already agreed by the Federation as per agreement dated 21st March, 1955.

The Federation claims that the time-rated weekly paid workers who are not covered by Item 1 of the Korea Award and have not received the increase of 12½ per cent as per item 2 of the Korea Award are also eligible for 12½ per cent increase in their initial basic wage as they are covered by the agreement dated 21st March 1955, but this will obviously not apply to the person joining after 8th November 1954 as per agreement dated 21st March, 1955.

The management contends that question of 12½ per cent increase on the initial basic wages of time rated weekly paid persons does not arise under Korea Award nor was it agreed in the agreement dated 21st March, 1955.

However, it is now agreed that an increment in the basic wages at 12½ per cent on the initial basic rates of time rated weekly paid persons whose rates are not fixed by Korea Award, that is to say of such persons who are entitled for an increase under item 2 of the Korea Award reading "Any class of employees not entitled for an increase in wages under the provisions given above may be granted an increase of 12½ per cent

in their basic pay" will be granted to such workers appointed upto 8th November 1954 with effect from the week commencing from the 7th August, 1955, without prejudicing the above said contention of the management. As regards the Federation's contention for 12½ per cent increase on the initial basic wages of such workers appointed upto 8th November 1954 with retrospective effect, that is to say from the date of joining, the point is referred to Sir Pheroze Kharegat who is in England at present by Mr. P. J. Registrar and if Sir Kharegat agrees, payment of arrears will be made on the same basis as in case of monthly paid workers. In case Sir Kharegat does not agree to the payment of arrears the increment of 12½ per cent granted as above from 7th August 1955 will not prejudice Sir Pheroze Kharegat's contentions regarding arrears and the Federation is then free to approach the Ministry of Labour, Government of India, New Delhi, for further necessary action. However, during the period this matter is not finally settled, the Federation assures to give full co-operation to the Management to maintain the normal production and despatches of coal.

The payment by Raising Contractors for their monthly as well as time rated weekly paid workers will also be made on the same lines as that of the workers directly paid by the Company. After the above said payments are made there will remain no further claim of workers regarding this demand."

32. Taking up first the question of weekly paid employees under the part (a) of this demand, it applies to those weekly paid employees who have already been paid 12½ per cent increase on basic wages from 7th August, 1955. The question arising for our consideration is whether they are eligible to arrears payment of such increase for the period prior to the said date 7th August 1955, i.e., for the period of their service from 1st October 1950 or the respective dates of their appointments upto 6th August 1955. In the statement of claims it is alleged that the basis for the granting of increase of 12½ per cent in the basic wages of these employees was an award dated 30th January 1954 in reference No. 11 of 1950 between the management of Chirimiri Colliery and their workmen, where the said increase of 12½ per cent was granted retrospectively from 1st November, 1947. It is there further alleged that subsequently in a similar dispute between the Jhagrakhand Collieries, Ltd and their workmen, by an award dated 14th February 1957 in reference No. 11 of 1955 the arrears of wages have been granted with retrospective effect. This award has been confirmed by the Appellate Tribunal in appeal No. 139 of 1956 by its decision dated 13th May 1958. Thus the employees of the collieries covered by para. 2 of the Korea Award are entitled to an increase of 12½ per cent with retrospective effect from 1st November 1947 or thereafter from the date of their respective appointments up to 26th May 1956, i.e. where the award of the All India Industrial Tribunal (Colliery Disputes) came into force. After referring to the relevant provisions of the two agreements dated 21st March 1955 and 6th August 1955, it is denied in the statement of claims that the Federation agreed to accept the increase of 12½ per cent only with effect from 7th August 1955 and gave up the claim of past arrears payable with retrospective effect from 1st October 1950 or the date of the respective appointments of the workers concerned.

33. It is an undisputed fact that this payment of 12½ per cent increase in basic wages is to be made under the Korea Award and at the time of the hearing it was conceded on behalf of the employers that they are not challenging the Korea Award which has always applied to their colliery. What they allege is that they have been paying what their predecessors did and 12½ per cent increase or equivalent thereof was already given so that there arose no question of any arrears at any time. They have produced a copy of the letter dated 25th August, 1954 (Ex. C-13) received from the Chief Mining Inspector regarding implementation of Korea Award in New Chirimiri Ponri Hill Colliery and in the letter it is stated:

"In continuation of this office letter of even No. dated 12th July 1954 it may be stated that the Korea Award was implemented in respect of workmen (daily rated and piece-rated) while Ponri Hill Colliery was under Government management."

In the first place if everything concerning the implementation of Korea Award was already done during the Government management, where was the necessity or occasion for the parties to enter into any agreement in this connection. Moreover in the Government letter there is no reference to weekly paid or monthly paid employees.

34. In the present reference we have to examine the claim in the light of the agreements between the parties. In the demand no claim is made with respect to the period prior to 1st October 1950 when the Government was in charge of the Colliery. Admittedly the present employers assumed management from 1st October 1950 and what we are concerned with is the period commencing from that date or the dates of the respective appointments of the workers concerned. Admittedly the weekly paid employees have been paid 12½ per cent increase from 7th August 1955 and the question now is with respect to the payment of such increase for the period of their service from 1st October 1950 or the respective dates of their appointments upto 6th August 1955. In the agreement dated 21st March 1955 it has been stipulated that the workers who were on the pay-roll of the company on 1st October 1950 will be given an increase of 12½ per cent in the basic wages prevailing on 1st October 1950. It is there further provided that those who came after 1st October 1950 to the date of agreement i.e. 8th November, 1954 will be given the increase of 12½ per cent in their basic wages prevailing on the date of their joining. Then at the time of the next agreement dated 6th August 1955, the Federation claimed that the time rated weekly paid workers who are not covered by item 1 of the Korea Award and have not received the increase of 12½ per cent as per item 2 of the Korea Award are also eligible to the increase in the initial basic wages as they are covered by agreement dated 21st March 1955, but this will obviously not apply to the persons joining after 8th November, 1954 as per agreement dated 21st March 1955. Thus the claim was then confined to those in service on 1st October 1950 and also those who joined between 1st October 1950 and 8th November 1954. The management then contended that the benefit of 12½ per cent increase under the Korea Award did not apply to the time rated weekly paid workers but at the same time without prejudice to its contention it was agreed that the said increase of 12½ per cent payable under the item 2 of the Korea Award will be granted to such workers appointed upto 8th November 1954 with effect from the week commencing from 7th August 1955. Thus the payment has been made accordingly from 7th August, 1955 and as regards the previous arrears, the dispute was to be referred to Sir Pheroze Kharegat who if decided against such demand, then the Federation was free to approach the Government for necessary action. Thus the claim for arrears has not been given up and I hold that under the agreements those on the pay roll of the company on 1st October 1950 as well as those engaged between 1st October 1950 to 8th November, 1954 are entitled to arrear payment of such increase for the period of their service upto 6th August 1955.

35 Coming next to sub-part (b) of this demand relating to monthly paid employees, we are concerned with those who were on the pay-rolls of the company or Raising Contractors between 1st October 1950 to 8th November 1954 but have ceased to be employees prior to 21st March 1955 and the point is whether they are eligible for arrear payment of 12½ per cent increase in basic wages under the two agreements, dated 21st March 1955 and 6th August 1955. Here also under the agreement dated 21st March 1955, the aforesaid provision would be applicable to the workers who were on the pay-roll of the company on 1st October 1950 as well as to those workers who came during the period 1st October 1950 to 8th November 1954. At the time of the second agreement, dated 6th August 1955 also, the Federation as said above raised the contention for 12½ per cent increase on the initial basic wages of such workers appointed upto 8th November 1954 with retrospective effect. The dispute was to be referred to Shri Pheroze Kharegat and if he held against the payment of arrears, then it was open to the Federation to move the Government for necessary action. There is nothing in the agreements to exclude the monthly paid workers and the provision there made would generally apply to all workers who were on the pay-roll of the company on 1st October 1950 or those who joined between 1st October 1950 and 8th November 1954. But under this part of the demand the claim is advanced with respect to ex-employees i.e. those who have ceased to be employees prior to 21st March 1955 and this presents the real difficulty. For the reasons stated above in connection with the overtime wages, they cannot get the benefit of the agreement made at the time when they were no longer in employment. I am now to decide the point under reference according to the agreements and in the absence of any specific provision there for payment to such workers, the agreements cannot in my opinion help them in establishing their eligibility if any.

36. As regards the shot-firers under sub-part (c) of this demand, they are eligible like other workers to 12½ per cent increase in basic wages from 1st October 1950 or the respective dates of their appointments upto 8th November 1954 under the two agreements. In the employers' written statement it has been contended that the shot-firers were in the category of daily-rated weekly paid employees when the Korea Award came in force and in the time of the previous

management they have already been paid as per the award as indicated in the aforesaid letter dated 25th August 1954 (c.f. Ex C-13). We are, however under the demand concerned with the period from 1st October 1950 when the present employers assumed management and they alleged in the written statement that on and from 1st October 1950 shot-firers have been appointed on a monthly basis. Shri Malviya however, rightly pointed out that if these workers were not allowed the increase of 12½ per cent from the date of their appointments, they can claim the same as Korea Award is clear on the point. I do not think that the management can deny the benefit of 12½ per cent increase to these workers on any such ground as alleged and I hold that they are covered under the two agreements as said above for the period from 1st October 1950 to 8th November, 1954.

37 As regards the office staff concerned in sub-part (d) of this demand, it is alleged on behalf of the employers that this office staff came into existence sometime in October 1950 when the present management took over the charge of the colliery from the Government of India and that this staff is governed by Shops and Establishment Act of the State Government. Shri Malviya argued that the present proprietors have got only this colliery and their office is at Nagpur because they are residents of Nagpur. He pointed out that there are instances where the office staff has been transferred to the colliery and *vice versa* and these employees are also engaged in connection with the working of the colliery and as such are employees of the colliery. There is no reason therefore why they should be debarred from the benefit of the 12½ per cent increase like other workers from 1st October 1950. The employers' representative at the time of the hearing could not deny the fact that the staff is transferable from Head Office to the colliery and *vice versa* but according to him this is being done only on rare occasions. Whatever it may be, when the office staff is interchangeable, it stands on the same footing as other workers and is entitled to receive the same treatment in the matter of wages and other service conditions. I therefore hold that under the two agreements the colliery's office staff at Nagpur is also entitled to 12½ per cent increase in basic wages.

38. Demand No. 5.—The point raised under this demand is whether Brijlal, Car Driver and Shri A. K. Sirkar, Electric Chageman are entitled to overtime payment under the agreements dated 21st March 1955 and 6th August 1955. In the statement of claims it is alleged that both of them are the employees of the company like other workers and they are entitled to the benefit of the two agreements for overtime payment. The joint application of the parties for the present reference is dated 6th November 1957 and we find from Ex. C-14 dated 5th November 1957 that just on the previous day one of these workers, Shri A. K. Sirkar was paid all his dues in respect of overtime payment and he has passed a receipt for the purpose. As regards the other worker Shri Brijlal, Car driver, it appears from Ex. C-15 read with Ex. C-17 that he was offered payment of the sum due but he declined to accept the same. He should therefore better be advised to accept the amount due to him. If the amount offered according to him, is inadequate, he may take such steps as may be open. So far as the present demand is concerned, what has to be decided is whether they are entitled to overtime payment under the two agreements dated 21st March 1955 and 6th August 1955 and my answer is in the affirmative in view of the fact that so far as the eligibility is concerned there is no dispute between the parties.

39. Demand No. 6.—This demand refers to the lighting arrangements in the labour quarters as contemplated under the agreements dated 21st March 1955 and 6th August 1955. The clause No. 3 of the agreement dated 21st March 1955 provides for street lighting thus:

“Street lighting in Bhaisa Dafai will be completed by the end of this year and efforts will be made to complete the lighting in the labour colonies. Lighting in thirty six artisan quarters in Bhaisa Dafai will also, be completed. Orders for the required transformer and necessary materials will be placed under intimation to the Regional Labour Commissioner (C), Nagpur.”

Then in the agreement dated 6th August 1955, the item No. 3 with respect to supply of light to the workers at their quarters and adequate arrangement for lighting the streets and the labour colony, lays down:—

“The company has got a transformer and quotations for the necessary and requisite parts of the transformer have been invited and quotation for the 3—pole switch has been received and we are ascertaining whether this will be suitable. Quotations from the other firms are

still awaited. Information regarding further development will be conveyed to the Federation from time to time. Street lighting and electrification of the artisan quarters in Bhaisa Dafai will be completed by the end of this year provided the material is received in time, subject to no objection from the Explosives Department. Efforts will be made to complete lighting of other defais. This satisfies the Labour Federation."

40. In the statement of claims it is alleged that these agreements contemplate: (1) Street lighting in Bhaisa Dafai by the end of the year 1955; (2) Completion of lighting in the labour quarters and roads, in all Dafais, by the end of the year 1955; and (3) lighting in thirty-six artisan quarters in Bhaisa Dafai by the end of 1955. It is there further alleged that this was the lighting programme agreed to for the year 1955 and the workmen expected that by the end of the year 1958 every nook and corner of the colliery would have been fully electrified through a planned programme. But this has not been done. They can therefore reasonably expect that the agreements above referred to will be executed at least by the end of the year 1958. The employers on the other hand in their written statement say that as agreed the street lighting and electrification of the artisan quarters in Bhaisa Dafai has already been completed and that the interpretation now advanced by the Federation was never contemplated under the two agreements. Shri Malviya pointed out that the lighting arrangements are made only in Bhaisa colony where the artisans are residing but it is not so done in the labour colony. On behalf of the management, it has been alleged that in the labour colony street light is there and for lights in rooms they never agreed. It was in the case of artisan colony that they agreed for both and have done accordingly. Shri Malviya denied that there is complete street lighting even in the labour colony and urged that in the labour colony which covers an area of about 4 to 6 furlongs, there should be a lamp post for every 200 feet distance and that the labour would be satisfied if one point is given per two Blocks. The employers' representative could not enlighten us as to what the existing arrangement is regarding street lighting or how many lights are there, though he stated that the management is prepared to add 40 lights subject to availability of power and other technical considerations.

41. So far as the present reference is concerned, the question before us on the point of lighting arrangements in labour quarters has to be judged from the two agreements as they are. In the first agreement dated 21st March 1955 in providing for street lighting under the item No. 3 it has been laid down *inter alia* that street lighting in Bhaisa Dafai will be completed by the end of this year i.e. 1955 and efforts will be made to complete the lighting in the labour colonies. Then the item No. 3 in the second agreement dated 6th August 1955 is not confined merely to street lighting but it refers to supply of light to the worker in their quarters and adequate arrangement for lighting the streets and the labour colony. It is there stated *inter alia* that street lighting and electrification of the artisan quarters in Bhaisa Dafai will be completed by the end of this year i.e. 1955, provided the material is received in time, and that efforts will be made to complete lighting of other defais. The management therefore under the two agreements is supposed to make necessary arrangements for street lighting in the labour colony as well as for lights in the labour quarters. Though the extent of the arrangement in this connection is not stated in specific terms or details, ordinarily it is understood that the lighting arrangement should be such as to satisfy any reasonable man in its extent and adequacy. The management may therefore provide for street lighting and lights in the labour quarters as now suggested by Shri Malviya or after an inspection on the spot the parties may jointly decide upon a definite programme both with respect to the time limit and the extent of the lighting arrangements. I hold accordingly.

42. Demand No. 7.—This demand is with respect to the recommendations of the Enquiry Committee submitted on 12th February 1955 and referred to against item No. 5 of the agreement dated 21st March 1955 and the point raised is how these recommendations are to be followed. The said item No. 5 with respect to the implementation of agreement with regard to seniority states:

"It is agreed that recommendation of the Enquiry Committee as submitted on 12th February 1955 will be looked into and implemented accordingly."

Ex C.19 is an extract of the findings of the Enquiry Committee and there before dealing with certain individual cases, the committee has made the following observations on the point of seniority:

"During the course of investigation into the cases where seniority has been overlooked while giving promotions or (making) fresh appointments, the committee found the cases of the following workers as genuine

and the Committee feels that the management should give due consideration in giving them a lift in their posts now in consideration of their seniority and efficiency."

Then the individual cases referred to are of Shri J. C. George, Shri U. N. Sarkar, Shri S. R. Chakravarti, Shri Mishrilal and Shri A. C. Naha Ray. Then the Committee further goes on to say that similarly the seniority of the following workers has been over-looked by the management in giving promotions and (making) fresh appointments on posts carrying higher salary:—

- (1) Shri D. A. Bhide, (2) Shri B. W. Nath, (3) Shri Sudhir Mukherjee, (4) Shri Vitthal, Blacksmith, (5) Shri B. B. Sinha and some of the mining sardars. It appears from the observations made and the individual cases discussed that in the committee's view with equal merit, the seniority should count in giving preference for promotions or fresh appointments.

43. In the statement of claims it is alleged that the report of the said Inquiry Committee submitted on 12th February, 1955 deals with (1) overlooking of seniority and promotions, (2) payment of layoff to workers and (3) Consideration in the wages of Shri R. K. Patnayak, Asstt. Despatch Clerk and Shri Badri Prasad, coal-cutting machine fitter and boiler workers etc. In the written statement filed on behalf of the employers it is contended that the cases as pointed out by the Inquiry Committee in relation to the alleged overlooking of seniority have been already disposed of and this item under reference refers only to the overlooking of the seniority of the employees and not to the other items raised by the Federation. In the written statement it is further contended that though it is not open to the Federation to raise the said new matters, the management has already done the needful in respect of the same and there remains nothing outstanding for being done in this respect. I have already said above that the findings of the Inquiry Committee as now produced refer only to the question of seniority in respect of certain individual workers and these cases have been already dealt with by the management as it appears from its letter Ex. C-18 addressed to Regional Labour Commissioner (C), Jabalpur. In any case the demand as it stands does not call for the determination of any individual cases and what I find from the recommendations of the Inquiry Committee is, as shown above, that where there is equal merit, the seniority should count for preference while giving promotions or making fresh appointments and I hold accordingly.

44. Demand No. 8—This demand raises the point as to what should be the principle of reimbursing the cost of medicines to the employees who purchased the same from outside according to the agreement dated 24th January 1954. The clause 14 of the said agreement runs thus:

"Inadequate supply of medicines in the Colliery hospital. Workers are asked to purchase medicines from the market for their treatment. All essential medicines be kept in the store. Payment of the cost of medicines purchased by the workers be made.

Payment of the cost of medicines purchased by workers under the instructions of the Medical Officer of the Colliery from outside with effect from 1st January 1952 in respect of diseases other than venereal diseases will be made by the Colliery on production of duly authenticated bills."

45. The cases on behalf of the workmen in the statement of claims is that the principle of reimbursing the cost of medicines to the employees is incorporated in the agreement itself and the management is required to pay all the bills of medicines purchased from the market for diseases other than venereal diseases with retrospective effect from 1st January, 1952. Under the statement of claims however a further case is advanced. Firstly it is alleged that in order to avoid difficulty in getting necessary instructions of the Colliery Medical Officer for purchase of medicines from the market, the best course is to store in the colliery hospital all medicines including patient medicines, injections, tonics etc. however costly they may be. Secondly it is alleged that the Coal Mines Labour Welfare Organisation has now taken the decision that treatment of T.B., Venereal diseases etc. should be entirely the responsibility of the collieries and hence the management should equip its hospital for treatment of employees in this respect also. In this connection it is pointed out that the agreement dated 24th January 1954 is now about 4 years old and the conditions have radically changed since then. The principle for the reimbursement of costs of medicines should not therefore be confined to the letter of the agreement but should conform to its spirit and the requirements of the time.

46. The case of the company in its written statement is that it has been maintaining well equipped and well-staffed dispensary at the colliery and the stocks of medicines are in no way less than what are prescribed by the Rules in connection with the annual grant-in-aid from the Coal Mines Welfare Fund. The additional demands of the Federation are beyond the scope of the terms of reference and the point before the Tribunal is restricted to what has been provided in the agreement dated 24th January, 1954. At the time of the hearing Shri Bobde on behalf of the management referred to the list of drugs given under the Coal Mines Labour Welfare Rules, 1949 and according to him these are the medicines normally kept in stock in the hospital for which the management spends about Rs. 5,000 every year. He also made it clear that the management is prepared to follow the agreement as it stands.

47. In my opinion in judging the present demand we are not required to look to any rules or any general considerations. Under the demand as it stands, the principle of reimbursing the cost of medicines to the employees who purchased the same from outside cannot be other than what it is according to the agreement dated 24th January, 1954. The provision in the agreement is restricted to diseases other than venereal diseases and the medicines purchased by workers from outside must be under the instructions of the Medical Officer of the colliery. If under such instructions the workers have to purchase any medicines from outside in respect of diseases other than venereal, then they are entitled to be reimbursed by payment of the cost of such medicines with effect from 1st January 1952 on production of duly authenticated bills. Practically this means that if the Medical Officer of the colliery on examining a particular worker for diseases other than venereal recommends certain medicines and these not being available in the company's store, if he is required to purchase the same from outside, then the payment should be made to him for the cost of such medicines on production of the necessary voucher or the bill. I therefore hold that the principle of reimbursing the cost of such medicines should be on the aforesaid line as laid down in clause 14 of the agreement dated 24th January, 1954.

Dated;

The 31st December, 1958.

P. D. VYAS,

Judge,

Central Government Industrial Tribunal, Nagpur

[No. LR-II/2(29)/55.]

S.O. 201.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the New Jemehari Khas Colliery and their workmen.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

REFERENCE No. 18 OF 1958

Employers in relation to New Jemehari Khas Colliery, P.O. Jaykaynagar
District Burdwan

AND

Their workmen.

Dhanbad, dated the 29th December 1958

PRESENT:

Shri Salim M. Merchant, B.A., LL.B., Chairman.

APPEARANCES:

Shri D. Narsingh, Advocate—for the employer-company.

Shri Kalyan Roy, Secretary, Indian Mine Workers' Federation, and Vice-President, Colliery Mazdoor Sabha—for the workmen.

Industry: Coal

State: West Bengal.

AWARD

The Government of India, Ministry of Labour & Employment, by its order No. LR-II/2(34)/58. dated 3rd April 1958, made in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes

Act, 1947 (XIV of 1947), was pleased to refer to me for adjudication the industrial dispute between the parties above named in respect of the subject matters specified in the following schedule to the said order:—

"Whether the refusal on the part of the management of New Jemehari Khas Colliery, to re-employ Sarvashri Narain Chandra Ghose, Suresh Bhar, Nalini Kanta Bose and Srimati Uma Biswas retrenched workmen, on restarting of the colliery during January 1957 was improper and if so, whether these workmen should be reinstated or given any other alternative relief."

2. Before dealing with the dispute on its merits it is necessary to give a brief account of the events leading upto the reference. It is admitted that the Jemehari Khas Colliery (hereinafter referred to as the colliery) at the relevant time—September 1956—employed about 535 workmen of whom the union claims a membership of 509 workmen. It appears that the colliery was flooded on 26th September 1956 due to heavy onrush of water and the management closed the colliery from 27th September 1956 after laying off the workmen by putting up the following notice:

"New Jemehari Khas Colliery (P) Ltd., dated 27th September 1956.

Notice to all workers and staff.

This is to inform you all with a heavy heart that due to yesterday's flood the whole mine drowned, the situation being out of our control, as you know, along with its all machineries.

Under the circumstances, there is no scope for any work whatsoever at the present moment in the mine.

It is, therefore, notified that you may go on leave with pay in cases where entitled and without where not entitled until the mine is completely de-watered and work resumed. As soon as the mine functions you will be informed to join to your duties.

(Sd.) M. SINHA, Manager."

3. According to the union this mine was flooded because of the negligence of the management whilst management contends that the mine was flooded because of heavy rains, which had also similarly affected other collieries. Be that as it may, it is admitted that thereafter the colliery re-started working in January 1957. The case of the union is that no notice was served upon the workmen informing them of the re-starting of the colliery as promised and required by the company's said closure notice of 27th September 1956; that on learning that the colliery had re-started working, a large number of the laid-off workmen including the 4 workmen under reference applied for work but the management refused to re-employ them. It is, however, admitted that on the date of the closure of the colliery, of the 4 workmen mentioned in the order of reference, N. C. Ghosh was employed as an Overman, Suresh Bhar was employed as a C.P. Miner and Srimati Uma Biswas was employed as a Creche Attendant. With regard to the fourth workman, Nalini Kanta Bose, the Union claims that on the date of the closure he was employed as a Pit Sirkar, whilst the company's case is that he was employed as a Transport Clerk, and further that on the date of the closure he was not in service, having been retrenched by the company's notice, dated 30th August 1956. According to the company, after the mine was closed on 27th September 1956, it had put up a notice on 29th September 1956 informing the workmen, "that those who do not want to avail of the leave until de-watering of the mine, may report themselves for works for cutting earth stone and coal on the new extensive quarry that has been opened near the 4 incline since last week." (see annexure "A" to the written statement of the company) But the union has denied any knowledge of this notice and no evidence was led at the hearing on the part of the management to establish that such a notice was at all put up. No reference to this notice has been made by the management in the correspondence that ensued between it and the Conciliation Officer and/or the Union. I am, therefore, not satisfied that any such notice was issued by the management. In any case, it is admitted that this notice would have applied only to Suresh Bhar who was a miner and not to the other 3 workmen who were doing other types of work.

4. According to the management it had put up a general notice on the mine, dated 15th December 1956 informing the laid off workers that the work in the pit would start from 1st January 1957 and asking them to join their respective duties preferably on that date and also informing them that it would not be

bound to accept any of the workers who failed to join their duties by 15th January 1957 the latest. (Annexure "B" to the company's written statement.) The union at the hearing denied any knowledge of this notice. Like the earlier notice of 29th September 1956 no reference to this notice is contained in the correspondence that ensued nor did the company at the hearing lead any evidence to prove the alleged notice. I am therefore not satisfied that the management had put up the notice, dated 15th December 1956 as alleged. It may, however, be stated here and it is admitted that none of the laid off workmen has yet been paid the lay off compensation for the period from 27th September 1956 when the colliery was closed, till January 1957 when the mine was re-opened.

5. To continue with the narration of events, the Union's case is that each of these 4 workmen had approached the management for work on coming to know of the re-opening of the mine but the management refused them work. Thereafter, some 32 laid-off staff and labourers of the colliery including these 4 workmen, addressed a petition to the Coal Mines Welfare Commissioner, Jagjivan Nagar, Dhanbad, with copies to several Government officials including the Conciliation Officer, Asansol, Regional Labour Commissioner, Dhanbad, the Inspector, Labour Welfare (Mines), the Hon'ble Labour Minister, West Bengal, and the Chief Inspector of Mines in India, Dhanbad. A copy of that representation is attached to the written statement of claim of the union as Annexure 2 and the registered postal acknowledgments thereof were also produced. That representation contained a list of grievances which the workmen had against the management of the colliery and in para. 4 thereof it was stated:—

"In spite of the full working of the colliery the Manager is not willing to re-employ most of the laid-off staff and labourers for the reasons best known to him. He does not give us any assurances for our job either verbally or written."

6. It is, however, admitted that a copy of this petition was not addressed to the management. Thereafter between May and 26th August certain correspondence ensued between the union and the Chief Labour Inspector, Asansol, and the management. I shall refer to that correspondence when I deal with the merits of the case of each of these 4 workmen. The next important event is the strike that took place in the colliery from 16th September 1957 and which was called off on 23rd September 1957 after the agreement of 27th September 1957, admitted by the management (Annexure 7 to the Union's statement of claim). The agreement covers several subject matters not relevant for the purposes of this reference. However, clauses 9 and 10 of the agreement relate to the claim for re-employment of 3 out of the 4 workmen concerned in this dispute, namely, N. C. Ghosh, Suresh Bhar, and Srimati Uma Biswas and I therefore re-reproduce them below:—

"9. Management agreed to start the Creche soon. The case of Miss Biswas may be referred to the Conciliation Officer whose decision will be final.

10. The question of the reinstatement of Sarvashree Naryan Ghose and Suresh Bhar would be taken up separately for conciliation."

Upon this agreement being reached, the strike was called off on and from 23rd September 1957. I may pause here and state that thereafter the management made an application to the Regional Labour Commissioner for declaring the strike as illegal under Section 24 of the Industrial Disputes Act, 1947 for the purposes of the Coal Mine Bonus Scheme but the Regional Labour Commissioner, Dhanbad, by his decision, dated 1st April 1958 rejected the management's application. From that order the management filed an appeal before this Tribunal, which was also rejected and the order of the Regional Labour Commissioner was confirmed.

7. Thereafter, the union took up the cases of N. C. Ghosh, Suresh Bhar and Srimati Uma Biswas in conciliation and in spite of the Conciliation Officer having offered the management every opportunity to attend before him the management under various pretexts did not take any effective part in the conciliation proceedings which consequently ended in failure.

8. With regard to Nalini Kanta Bose as his case had already been taken up in conciliation by the date of the agreement of 22nd September 1957, he was not mentioned in that agreement. The Union has filed the correspondence that passed between it and the Senior Labour Inspector, Conciliation Officer, and the Regional Labour Commissioner on the one hand and the management on the

other, with regard to its demand for re-employment of these 4 workmen. The conciliation proceedings, having ended in failure, the Government was pleased to refer this dispute to adjudication.

9. Now, the company's case is that none of these 4 workmen had reported for work within a reasonable time, after the re-starting of the colliery in January 1957 and therefore it was justified in not re-employing them. It has argued that in terms of the Government Order of Reference the enquiry should be confined and limited only to the events upto January 1957 when the colliery was re-started and the lay-off ended, and the subsequent events should not be looked into. I am of the opinion that this is not a valid contention. The Government order of reference is dated 3rd April 1958 and admittedly the Government referred the dispute after the failure of the conciliation proceedings. The events that took place after the colliery was re-opened in January 1957 are in my opinion material for a proper adjudication of this dispute, which is regarding their reinstatement in service. The company by agreement of 22nd September 1957 agreed to refer to conciliation the cases of Ghose, Suresh Bhar, and Srimati Uma Biswas. With regard to the fourth workman, Nalini Kanta Bose, the workmen's case is that he was not dismissed as alleged by the company by its notice, dated 30th August 1956 and that he had also been laid-off and had not been given work though he applied for the same after the re-opening of the mine. His case was also taken up in conciliation, but independently. There are also certain letters and notices addressed by the company to these workmen and other subsequent events and happenings are material for determining whether these workmen are entitled to be reinstated and if not what other relief they are entitled to. In my opinion, for a proper adjudication of this dispute, it is necessary to consider the events that took place subsequent to the re-opening of the mine in January 1957 till the failure of the conciliation proceedings before the Conciliation Officer, after which the reference was made by Government.

10. I now proceed to discuss the case of each workman on their merits
Naram Chandra Ghose:

11. According to the union he had worked as an Overman for over 7 years, whilst the company states that he had been in service as an Overman in the colliery from December 1953. The Union also alleges that he is the Joint Secretary of the Local Branch of the Union, but the management denies all knowledge of this. It is, however, admitted that he was in service of the colliery on 27th September 1956, when the workmen were laid-off due to the flooding of the colliery. Though in his letter, dated 26th August 1957 addressed to the Manager of the colliery Ghose had stated that after the closure of the colliery he was un-employed, it is admitted in the written statement of claim that after the closure of the colliery on 27th September 1956, he was employed as an overman in the Gajdar Kajora Colliery. According to the Union he took up this job temporarily during the period of his lay-off. The company has in this connection examined Sri Abinas, the Manager of the Gajdar Kajora Colliery (E.W. 1) who stated in his examination-in-chief that Ghose had worked in the Gajdar Kajora colliery from 16th October 1956 to 20th April 1957 as a temporary Overman, and that Ghose had told him that he was working as an Overman in the Jemehari Khas colliery, which had been temporarily closed down due to inundation and that he would go back to the service of the Jemehari Khas colliery when it would re-start working. He stated that the Provident Fund Account of Ghose had been transferred to him. In cross-examination Shri De stated that when he came to know sometime in April 1957 that the Jemehari Khas colliery had re-started working he asked Ghose to leave his colliery. He also stated that he was formerly a manager of the Jemehari Khas colliery and that each of these 4 workmen had then worked under him and he had found their work satisfactory and there had been no trouble in the colliery. From this evidence it is clear that Ghose's statement in his letter, dated 26th August 1957 that he was un-employed after the closure of the colliery is false and that in fact he had taken up service only temporarily in the Gajdar Kajora colliery till the Jemehari Khas Colliery was re-started and that he was anxious to get back to his post of Overman in the Jemehari Khas colliery where he had put in several years of service.

12. According to the Union, Ghose on coming to know that the Jemehari Khas Colliery had re-opened made several verbal requests for being taken back in service but the management refused to employ him. The management relying upon its alleged notice of 15th December 1956, urges that as Ghose had failed to report for work by 15th January 1957, as required by that notice or a reasonable time thereafter, the management was justified in not taking him back to

work. Now, the union denies knowledge of the company's notice, dated 15th December 1956 and its case is that no such notice was at all put up. As I have stated earlier, the management has not led any evidence to prove that it had put up that notice nor is there any reference to that notice in the correspondence that had subsequently ensued. By the company's closure notice, dated 27th September 1956 the company had stated that as soon as the mine would start functioning again, the workmen would be informed to join duties. Surely, even assuming that the notice, dated 15th December 1957 had been put up by the company, one would expect a more satisfactory mode of intimation to the workmen that the colliery had been re-started, than by a notice being put up on the colliery. As I have stated earlier, on 28th March 1957, Ghose along with 31 other laid-off workmen had addressed a petition to the Coal Mines Welfare Commissioner and other officers complaining that the Manager was not taking them back in service for the reasons best known to him. This shows that even prior to 28th March 1957 Ghose had applied to the management to be taken back in service. I am satisfied that prior to 28th March 1957, Ghose on learning of the colliery having re-started work had applied to be taken in service and had been refused employment. After Shri Ghose had addressed the petition of 28th March 1957, Shri Kalyan Roy, the Secretary of the Indian Mine Workers Federation addressed a letter, dated 14th May 1957 to the Senior Labour Inspector, Asansol, with a copy to the Manager of the colliery (Annexure III to the Union's written statement) in which he stated certain grievances of the workmen. Para 11 of that letter was as follows:—

"(a) When the colliery was closed, workers dispersed. But when it was opened again, new workers have been appointed instead of old workers. Shri Narayan Chandra Ghose, Overman, has not been taken in his job, while a new overman named Yusuf Mian has been appointed a month back."

"(c) Instead of employing old workers, the company is employing few new hands and denying jobs to old workers."

To this letter the company replied on 23rd May 1957 (Annexure 4 to the Union's written statement) denying the Federation's right to represent the grievances of the workmen, on the ground that the management did not recognise it but the Mazdoor Congress Committee which represented the workmen of the colliery and therefore it could not take any action on that letter.

13 Thereafter, on 17th July, 1957 the Manager of the colliery addressed a letter to Ghose in which he stated that since the mine was drowned he had been working in some other colliery and was not available for duty; that he had been asked by the company's letter dated 6th May, 1957, to take final payment, which he had refused to accept. He was therefore asked to call at the office and take his final payment. The management concluded the letter by stating:

"due to your continuous troublesome behaviour, it has been decided by the Director to pay you off finally."

Ghose replied by his letter dated 26th August, 1957 (Annexure 5 to the union's written statement) in which he stated that he had been un-employed since the colliery was closed. He further stated that though he had approached him several times for his job, he had appointed another man in his place. He denied that the management had informed or written to him to take any payment final or otherwise and therefore the question of his not having replied to the company's letter of 6th May, 1957, did not arise. He concluded the letter by stating:—

"I have approached you on several occasions, but have been insulted and abused by you. Any enquiry will prove that. So I am surprised to read the last paragraph of your letter. This is not only vague but absolutely baseless."

I may pause here and stated that at the hearing the company was not able to prove its alleged letter of 5th June, 1957. Ghose forwarded a copy of this letter to the Conciliation Officer (Central), Asansol, and Regional Labour Commissioner (Central), Dhanbad and his case was thereupon taken up in conciliation (see annexure 8 to the Union's written statement). Thereafter, as stated earlier, on 16th September, 1957, there was a strike in the colliery over certain demands of the workmen. Conciliation proceedings were held and the strike was evidently called off after the management had addressed its letter dated 22nd September, 1957, to the Conciliation Officer (Annexure 7 to the union's written statement), under para 10 whereof the company agreed that the question of the reinstatement of Ghose would be taken up separately for conciliation.

14. The union's grievance is that having agreed to refer Ghose's case to conciliation, the management avoided attending the conciliation proceedings over the refusal of the management to give work to Ghose. This grievance appears to me to be justified. The Conciliation Officer by his letter dated 16th September, 1957, asked the management to appear before him on 24th September, 1957, but the manager nor his representative attended. On 29th September, 1957, the Conciliation Officer addressed another letter to the Manager of the colliery in which he expressed his regret at the Manager not having attended the meeting on 24th September, 1957 and asked him to attend personally or through his authorised agent on 10th October, 1957. (Annexure 9 to the union's written statement). But the management failed to attend even on that date. It, however, appears to have sent a letter to the Conciliation Officer on the 9th but the contents of that letter are not known. The Conciliation Officer thereafter addressed another letter on 10th October, 1957, informing the Manager of the colliery that he would take up the case of Ghose on 15th October and once again calling upon him to attend or to send his representation on that day. The management attended that hearing, but nothing tangible seems to have emerged at that meeting and the conciliation proceedings were adjourned to 30th October, 1957 but by the Conciliation Officer's letter dated 26th October, 1957 (annexure 12 to the Union's written statement) the hearing was changed to 6th November, 1957.

15. In the meantime, when the conciliation proceedings were in progress, the manager on 19th October, 1957 addressed a notice to Ghose (Annexure 11 to the union's written statement) under certificate of posting. This letter is an important document and I therefore reproduce it in full:—

"To Shri Narayan Ghose,

As you have refused to take delivery of the chargesheet dated 18th October, 1957, you have indicated that you know the seriousness of the offence.

However, the letter is again sent under certificate of posting."

Yours sincerely,

(Sd) M SINHA.

New Jemehari Khas Colliery"

Now, Ghose denies any knowledge of the alleged charge sheet dated 18th October, 1957 and his case is that the story of any such charge sheet having been offered to him and his having refused to accept it is false. When pressed at the hearing to produce a copy of the alleged charge-sheet, the management could not produce it. The company consequently changed its story and stated that no charge sheet in fact was issued, but that a letter had been addressed to Ghose stating that he had forcibly entered the Creche in the colliery. But even a copy of this alleged letter was not produced. The union's contention is that no charge sheet or any letter of the nature stated by the management had ever been served and that the whole story of the charge sheet was made up to avoid appearing before the Conciliation Officer. I am inclined to accept this contention of the Union and the subsequent events, to which I shall presently refer, support this contention of the Union. It appears that thereafter a criminal case was instituted against Ghose and Suresh Bhar and some others in the Court of the 2nd Class Magistrate at Asansol (Case No. G.R. 2630 of 1957) charging them with offences under Sections 448 and 323 I.P.C. with having entered the quarters of the new Creche Attendant, Shrimati Kanak Sirkar, who had been appointed after Shrimati Uma Biswas, was refused employment and of having assaulted her on 3rd November, 1957. That case was decided on 15th November, 1957 and Ghose and Suresh Bhar and the other accused were acquitted. During the pendency of that case the management on 4th November, 1957, wrote to the Conciliation Officer declining to attend conciliation proceedings fixed before him on 6th November, 1957, on the plea that the conciliation proceedings would adversely affect the pending criminal case against Ghose. The Union, however, made a strong representation to the Conciliation Officer to continue the Conciliation proceedings and the Conciliation Officer by his letter dated 21st November, 1957 (Annexure 14 to the Union's written statement), once again called upon the management to attend the conciliation proceedings before him on 29th November 1957. The management appears to have addressed a letter to the Conciliation Officer dated 30th November, 1957, requesting that the meeting be held on 13th December, 1957. The Conciliation Officer by his letter dated 5th December, 1957 (Annexure 15 to the union's written statement) stated that he was anxious to hold the conciliation proceedings

at an earlier date, but as desired by the management he fixed the meeting for 13th December, 1957, and appealed to the Manager that if discussion on all the pending disputes were not finished on that day, the manager should co-operate by attending from day to day and not prolong the dispute any further. But the management did not attend on 13th December, 1957. On 9th December, 1957 Shri Kalyan Roy, addressed a letter to the Conciliation Officer (Annexure 16 to the union's written statement) complaining against the management's systematic violation of the agreement of 23rd September, 1957 and stating *inter alia* that the management had got crim-- ed against Ghose and Suresh Bhar, only to prejudice the before him. Shri Roy also stated that after having agreed on 23rd September, 1957 to refer the cases of Ghose and Bhar for conciliation, the management had on 29th November, 1957, sent amounts to Ghose and Suresh Bhar by Money Order in "final payment", which they had refused to accept. Shri Roy stated that this was done in violation of the agreement of 23rd September, 1957. In a letter dated 9th December, 1957, addressed to the Sub-Divisional Officer, Asansol, Shri Kalyan Roy alleged that the company had engaged two new Overmen, whilst Ghose had been kept idle. In that letter Shri Roy also referred to a criminal case which was filed before Shri Chatterjee, First Class Magistrate, Asansol, in which the management had agreed to refer all dispute to the Conciliation Officer for settlement, but the management never acted upon that undertaking. At the hearing the union gave the number of the case as Misc. case No. 113 of 1957 and the date when the case was disposed off as 9th November, 1957 and these facts are not denied by the management.

16. The subsequent proceedings before the Conciliation Officer did not yield any fruitful results. It appears that there was some proceeding held on 14th January, 1958, when the Manager alleged he was insulted by Shri Kalyan Roy using un-seemly language about him. The manager protested against this by his letter dated 18th January, 1958, addressed to the Conciliation Officer, Ranigunj, and consequently the conciliation ended in failure and the conciliation officer reported accordingly to Government who was pleased to make this reference.

17. Now from these facts, I am satisfied that Ghose had within reasonable time applied for his old job of overman on coming to know that the colliery had restarted work and that the management had refused to take him back. The management has not been able to prove its alleged notice of 15th December, 1956, by which the workmen are alleged to have been informed that the pit would restart working from 1st January, 1957 and asking them to re-join their duties preferably by that date and further informing them that it would not be bound to re-employ those who failed to re-join service by 15th January, 1957. When a mine is closed for a long period and the workmen are laid off, they naturally disperse and do not continue to stay on at the colliery. In my opinion the company's alleged notice to the workmen, even assuming that such a notice was put up, was in the circumstances of the case not a proper or adequate notice and therefore some latitude in the time within which these workmen could report for work should be allowed. No doubt, after he had been laid-off Ghose had accepted service with the Gajdar Kajora Colliery, but that was a temporary appointment till such time as the colliery was to be re-started, as is made clear by the statement of Shri De, the Manager of that colliery, who stated that Ghose had been engaged by him only temporarily till such time as the New Jemchhari Khas colliery would re-open and that on coming to know in April 1957 that the said colliery had re-opened, he asked Ghose to leave his colliery. It is significant that even before leaving the Gajdar Kajora Colliery, Ghose had addressed the petition on 28th March, 1957 to several authorities complaining that he was not being taken back in service, though the colliery had re-opened. Thereafter followed the correspondence with the management to which I have referred. All this shows that Ghose was anxious to get back his old job in this colliery where he had put in several years of service. In the facts and circumstances of the case, I am satisfied that Ghose had within reasonable time of the re-opening of the colliery applied to be taken back in service but the management had refused to re-employ him. The story of the company having addressed the letter dated 6th May, 1957, and of the charge sheet dated 18th October, 1957 appear to me to be false. If anything, they would show that the company had treated him as continuing in its service. After the strike of September, 1957 the company is writing agreed to refer Ghose's case to the Conciliation Officer and I am satisfied that thereafter the management did not honour this agreement and avoided appearing before the Conciliation Officer, on the pretext that Ghose was under prosecution for the alleged offence of having trespassed into the quarters of the new Creche Nurse and of having assaulted her, of which charge he was subsequently acquitted. I cannot help stating that the conduct of the management

in this respect appears to me to be *mala fide*. The management also did not pay any lay-off compensation which it was clearly liable to pay to its workmen for the lay-off period. On the facts and circumstances of the case, I am more than satisfied that the company had improperly refused to re-employ Ghose after re-starting of the colliery and that he is entitled to be reinstated in service. Considering that Ghose was in employment of the Gajdar Kajora colliery till 20th April, 1957 and the other facts and circumstances of the case, I think the fair order to make would be to direct that Ghose should be reinstated in service as Overman with continuity of service and be paid half his wages (basic wage and Dearness allowance) as Overman for the period from 1st October, 1957, till the date he reports himself for duty in the colliery which he should do within a fortnight from the date this Award shall become enforceable. I further direct that the amount found due to him as stated above shall be calculated and paid to him within 10 days of his re-joining service.

Shri Suresh Bhar—

18 It is admitted that Suresh Bhar was employed as a C.P. Miner and had 2 years service from 8th September, 1954 to 26th September, 1956 to his credit on the date the mine was closed on 27th September, 1956. According to the Union, on the colliery being re-started in January 1957, he asked for his job but the management refused to re-employ him. He is one of the signatories to the petition, dated 28th March, 1957. (Annexure 2 to the Union's written statement). Thereafter on 3rd June 1957, he addressed a letter to the Manager of the colliery complaining that after re-opening of the colliery he was not taken back in service to his old job nor was paid lay-off compensation. He applied to be allowed to resume his duties and claimed lay off compensation (Annexure 18 the union's written statement). The management admits receipt of this letter. The Manager replied by his letter dated 22nd June, 1957, in which after referring to his earlier letter dated 18th April 1957, he stated "instead of taking final payment if you go on indulging in various violent activities in this way day after day, I shall have to take serious action against you". In the meantime, the matter appears to have been referred to the Senior Labour Inspector, Asansol, who after having made some enquiries from the Manager, addressed a letter to Bhar on 15th June, 1957 (Annexure 19 to the Union's written statement), in which he stated that he had visited the colliery on 1st June, 1957 and 20th June, 1957 for looking into his case and that the management had stated that he had reported for duty only in April 1957 and was then verbally informed that there was no work for him as the mine was working only partially and there was no scope for employment of workmen of his category and that he should wait until further de-pillaring work starts within a few months thereafter; that the management had reported that instead of acting on this advice he (Suresh Bhar) had indulged in violent activities against the management and that the management by its letter dated 18th November, 1957 had asked him to take his final dues which he had failed to do. In view of these facts, the Senior Labour Inspector stated that he regretted he could not do anything further in the matter. (Annexure 19 to the Union's written statement). To this letter the Secretary of the Union replied on 31st October, 1957 stating that he had been mis-informed by the management; that if he had gone through the register of the company he would have found that new hands had been appointed as C.P. miners after April 1957; that after waiting for a few months Bhar had again asked for employment but had been refused employment and the management had framed a false charge against him; that the enquiry he had made was one sided and in the absence of Bhar and requested him again to enquire into the matter. To this letter the Senior Labour Inspector replied on 20th November, 1957 repeating that having applied for re-employment only in April 1957, he was asked by the management to wait for sometime and having indulged in violent activities he was not considered for subsequent appointment. (Annexure 21 to the Union's written statement). To this letter the Union replied on 19th December 1957, asking the Labour Inspector not to believe what the Manager had informed him; but to hold a proper enquiry in the presence of Bhar. The union also alleged that the management was victimising Bhar because he was an active trade union worker. He therefore asked the Senior Labour Inspector to make a proper enquiry in the presence of Bhar (Annexure 22 to the Union's written statement). Then followed the strike of September 1957 and by clause 10 of the agreement of 22nd September 1957, the management agreed to refer Bhar's case to the Conciliation Officer along with that of Ghose. On 30th December 1957, the Conciliation Officer (Central), Raniganj wrote a letter to the parties calling them for a discussion on 14th January 1958, but the management declined to discuss the matter in the presence of the union and consequently the conciliation failed. The union has also relied on Shri Kalyan Roy's letters, dated 6th December 1957, and 9th December 1957 addressed to the Regional Labour

Commissioner and the Sub Divisional Officer, Asansol respectively in which he complained against the harassment to which union officials were being subjected and the false cases which the management had filed against Bhar.

19. The management's case is that Bhar had failed to report himself for the alternative work which it had offered to miners at the quarry by its notice dated 29th September 1956. But as I have stated earlier, the Union denied this notice and the notice was not proved. The management has stated that Bhar was working under Sirdar Ramdhari and that after the notice of 29th September 1956, many of the workers of this Sirdar had accepted alternative work in the quarry. But the management has not led any evidence to prove this. From what the Manager had stated to the Senior Labour Inspector, when he went for enquiries on 1st June, 1956 and 12th June, 1956, it does appear that Bhar had applied to work but according to the management only in April 1957. I am however, inclined to accept union's story that even prior to April 1957, he had applied for work but had been refused work. It has, however, to be borne in mind that the management in April 1957 had asked him to wait for a few months till de-pillaring started, when he was assured he would be taken back in service. The management also by the agreement of 23rd September 1957, had agreed to refer his case for conciliation to the Conciliation Officer, but the conciliation failed because the management later non-cooperated with the enquiry.

20. On these facts and circumstances of the case, I hold that the management's refusal to re-employ Suresh Bhar in service after the re-opening of the colliery was not proper.

21. With regard to what relief should be granted to him, I am of the opinion that this is not a fit case where re-instatement should be ordered, as it is admitted that in Misc. Case No. X13 of 1957 under Section 107 of the Cr. Procedure Code decided on 9th November 1957, that Bhar had given an understanding to be of good behaviour and not to disturb the peace and on that undertaking the case was withdrawn. It was also stated at the hearing that Bhar has been involved in as many as seven criminal cases, which had been instituted against him. According to the management the Manager of the colliery was severely assaulted on 12th March, 1958 when he received several injuries and Bhar is an accused in that case. No doubt Bhar was acquitted in the case in which he was charged along with Ghose with having trespassed into the room of the new creche attendant and of having assaulted her. In all 7 criminal cases have been instituted against Bhar, out of which 3 are still pending. No doubt in each of the 4 cases which have so far been decided Bhar has been acquitted, but 3 cases are still pending against him, including the case of having assaulted the manager. In the circumstances, I am not inclined that it would be in the interest of industrial peace to direct his reinstatement in service. 'I think the ends of justice would be met if the management were asked to treat his case as one of retrenchment on the date the colliery reopened in January 1957 and he were directed to be treated as having been retrenched and paid retrenchment compensation for his service with the company till that date, at the rate of 1/2 month's wages (basic plus dearness allowance) for each completed year of service, period of more than 6 months service being treated as one completed year of service. I further direct that this amount should be paid to him within a week of this Award becoming enforceable. This compensation would be in addition to whatever other dues he was entitled to on the re-opening of the colliery, including lay-off compensation for the period of lay off.

Nalini Kanta Bose—

22. According to the union Nalini Kanta Bose was working as Pit Sirkar and had put in 7 years' service with this company. The union claims that he was the treasurer of the local branch of the Sabha. According to the Union he was in service on the date of the closure of the colliery on 27th September 1956 and on the re-opening of the colliery in January 1957 he had approached the management to give him back his employment, but the management refused to do so. He was one of the signatories to the petition dated 28th March 1957, (Annexure 2 to the Union's written statement) to which I have already referred. Thereafter on 3rd June 1957, he wrote a letter to the Manager of the colliery stating that after the re-opening of the colliery he had not been taken back in his old job and no laid-off compensation had been paid to him. He concluded by asking the management to allow him to resume his duty. (Annexure 25 to the Union's written statement). The receipt of this letter by the management is admitted. According to the Union, thereafter on 1st August 1957, the company appointed a new Pit Sirkar and on 5th August 1957, the Union addressed a letter to the Conciliation Officer, Central, Asansol (Annexure 26), complaining that Bose had

not been re-employed after re-opening of the colliery and no lay-off compensation had been paid to him so far; that Bose had on several occasions approached the local management to re-employ him but the management had kept quiet. The Union further stated that a new Pit Sirdar had been appointed by the management in spite of the fact that an old employee of the category had not been taken back. The union alleged that the management was indulging in anti-labour activities and violating its standing orders. It concluded by requesting the Conciliation Officer to intervene in the matter and secure reinstatement of Bose with all back wages. A copy of this letter was also forwarded to the Senior Labour Inspector, Asansol, Regional Labour Commissioner (Central), Dhanbad, and also to the Managing Director of the Colliery. Thereupon, the Conciliation Officer wrote to the Managing Director of the colliery on 12th August 1957, inviting reference to the Union's letter of 5th August and calling upon the management to attend before him on 17th August 1957, for a joint discussion (Annexure 27 to the written statement of the Union). The management did not attend the meeting of 17th August 1957, as also on 24th August 1957, and thereupon the Conciliation Officer addressed another letter dated 2nd September 1957, to the Managing Director recording the said absence of the management, and asking him, "to submit a written reply in the matter for not attending the earlier meetings." (Annexure 28 to the written statement of the Union). A copy of this letter was endorsed by Conciliation Officer to the office Secretary, Colliery Mazdoor Sabha, Asansol, with the remark that the management was not agreeable to participate in a joint meeting with his Union. The management did not comply with the request contained in the Conciliation Officer's letter of 2nd September 1957 and thereupon the Conciliation Officer wrote another letter on 24th October 1957, to the Manager of the colliery informing him that he would take up the dispute for discussion on 30th October 1957, and requiring him to attend with all relevant papers either personally or through his authorised representative (Annexure 29 to the written statement of the Union). The Conciliation Officer also requested the office Secretary of the Colliery Mazdoor Sabha to attend the meeting fixed for 30th October 1957. It appears that thereafter the Conciliation Officer had some conversation with the Manager of the colliery on 30th November 1957, when he visited the colliery and he wrote a letter on the 21st November 1957 to the Manager requesting him to attend the meeting called for 29th November 1957 for further discussion in the matter and also requested him to bring along with him a written reply in the matter, if necessary. Some discussion thereafter appears to have been taken place on 12th December 1957, and on 30th December 1957, the Conciliation Officer again wrote to the Manager asking him to attend on 14th January 1958, for further discussion with all relevant papers. On 14th January 1958, the Conciliation Officer took up the cases of N. K. Bose as also of Bhar but the management though represented refused to discuss with the Union and the Conciliation efforts thus ended in failure.

23. The Union urges that the management had wrongly refused to re-employ N. K. Bose after the colliery re-opened in January 1957 and prays that it should be directed to reinstate him with all back wages.

24. The company's case, on the other hand, is that N. K. Bose was not employed as a Pit Sirdar, but was employed as a Transport Clerk. It denies that he had been in service of this colliery for 7 years and states that he was employed on 1st January, 1954. On the merits, the company's case is that he had been retrenched from service by the company's one month's notice dated 30th August 1956 which expired on 30th September 1956 and therefore he was not one of the workmen laid off when the mine was closed on 27th September 1956 and the notice of closure dated 27th September 1956, did not apply to him. The company on the basis of this notice has argued that his case is not covered by the Government's order of reference, as he cannot be said to have been kept out of employment on the re-opening of the colliery in January 1957. Now, the Union has denied the notice of 30th August 1956 and it has urged that the company's story of this notice is false and an afterthought. Yet the management led no evidence at the hearing to prove this alleged notice.

25. The company's case was that N. K. Bose had signed in receipt of this notice in the peon book but when asked to produce the peon book it stated that it was not available as it had been lost during the flooding of the mine. I find it impossible to believe this story of the management. If any such notice had been served, surely the management would have made a reference to it in its correspondence which subsequently took place or made a mention of it in its letters to the Conciliation Officer. At the hearing Shri D. Narsingh, Advocate, for the company fairly admitted that the company had not referred to its alleged notice of 30th August 1956 in its letters to the Regional Labour Commissioner.

The story of the notice of 30th August 1956 has been put forward for the first time in the written statement of the company and I am of the opinion that this defence is false and put up as an afterthought. It is significant that the management did not reply to N. K. Bose's letter of 3rd June, 1957, receipt of which it admits nor did it deny Bose's statement that he had not been re-employed though he had approached the management for his old job after the colliery had re-opened. On the record, I am satisfied that N. K. Bose was one of the workmen who was laid off when the colliery was closed on 27th September 1956 and that in spite of his having approached the management for his job after the colliery was re-opened, he was not re-employed. The management's story of his having been retrenched by its notice dated 30th August 1956 appears to me to be false. I would therefore answer the question in reference in 'his favour.

26. It was suggested on behalf of the management that its action was *bona fide* as it had retained N. K. Bose's daughter Shefali Bose in its service. But the union has pointed out that the company had in fact attempted to terminate her services also and it was admitted that she was taken back in service only on 1st March 1958 as a result of conciliation proceedings.

27. I think this is a fit case where reinstatement with continuity of service should be ordered with back wages (Basic pay and Dearness Allowance) from 3rd June 1957, and I award accordingly. The management is therefore directed to re-employ N. K. Bose in his former post on his reporting for reinstatement within 10 days from the date this award becomes enforceable. I further direct that his wages from 3rd June 1957 till the date he is reinstated in service, should be paid to him within 10 days of his joining the service.

Shrimati Uma Biswas—

23 It is admitted that she was the Creche Attendant of the colliery and according to the company she had been in service for several years but the letter of appointment given to her on 20th December 1951 shows that she was appointed as a Creche Nurse of this colliery with effect from 1st January, 1952. It is admitted that when the colliery closed on 27th September 1956, the Creche was closed and thereafter when the colliery was re-opened in January 1957 she was not given work. The Union in its written statement of claim has attached a number of documents, some of them relating to events which took place even prior to the closure of the colliery. The Annexure A series thereof refer to the correspondence that had passed between her and the Manager during August 1956 relating to quarters for her. It appears that when she joined service she was living in a part of the creche building. By this letter dated 2nd August 1956, the Manager asked her to vacate the creche and occupy another quarter, but Shrimati Biswas by her letter dated 4th August 1956 objected that the quarters were not suitable for a female employee of her category as they were without any latrine, kitchen and bath room. To this the Manager replied on 6th August 1956, that other staff were occupying such quarters with their family and that her continuing to occupy the creche building was irregular and illegal. This correspondence then rested there, till it was revived in March 1957 when there was a further exchange of letters between the parties. In the meantime, after the colliery was re-opened in January 1957, the Managing Director of the colliery on 11th February 1957 addressed a letter to the manager of the colliery regarding certain articles alleged to be missing from the creche. He was asked to ask Miss Uma Biswas's explanation with regard to it. The Manager of the colliery then addressed a letter to Uma Biswas on 16th February 1957, forwarding a copy of the Managing Director's letter to him asked for explanation with regard to the missing articles to which she replied on 18th February 1957 denying her responsibility for the alleged missing articles. She also asked for the particulars of the missing articles. According to her on 9th February 1957 she learnt that the lock had been broken on 6th and some articles were missing; that the creche was closed for 5 months and she therefore did not know what had happened. She stated that on learning on the 9th February 1957 that the lock had been broken, she had been to see the manager who refused to see her and she had thereafter called again twice or thrice on him but he did not see her. She asked to be allowed to see everything so that she would establish her innocence. This correspondence is Annexure 'B' to the Union's written statement. No enquiry was held on the charge but almost 5 months later, the company by its letter dated 16th July 1957 dismissed her on the ground that she had failed to see the Managing Director when she was called upon to do so and her explanation with regard to the missing articles was not found satisfactory. To this she replied on 5th August 1957 that the question of the missing articles had been settled before the Conciliation Officer (Central) and the Labour Inspector (Central) on 27th March

1957 when it was proved that she was not responsible for the missing articles. She further stated that she had met the manager who assured her that the creche would be opened soon and she would be given back her job. She alleged that the manager wanted to victimise her on false charges and concluded by asking him to allow her to resume her duties (Annexure D2 to the D series). Some further letters were exchanged on the subject of her dismissal ending with the manager's letter to her dated 24th August 1957, stating that nothing further could be done (Annexure D3, D4 and D5).

29. In the meantime when Shrimati Uma Biswas was admittedly not given any work after the re-opening of the colliery in January 1957 she addressed a representation dated 26th March 1957 to the Labour Welfare Commissioner, Jagjivan Nagar, Dhanbad, who has authority to see to the proper working of creches in collieries. She also signed the representation dated 28th March 1957, referred to earlier (Annexure 2 to the Union's written statement) which was addressed to the Coal Mines Welfare Commissioner and other authorities. In her letter dated 6th June 1957 addressed to the Senior Labour Welfare Officer, Kulla, Shrimati Uma Biswas recorded that the Manager of the colliery had promised her in the presence of Shri B. B. Prasad, Coal Mines Labour Welfare Inspector, that he would give her back her job from 1st June 1957 [see annexure C(2) to the C series]. She also addressed another letter on 5th August 1957 to the Coal Mines Welfare Commissioner in which she expressed her apprehension that the management would appoint a new creche attendant when the creche was re-started. (Annexure E to the union's written statement).

30. It may be stated that even though the colliery resumed working in January 1957, the management did not resume the working of the creche till October 1957.

31. Then followed the strike of September 1957 and by clause 9 of the agreement of 22nd September 1957, to which I have already referred the management agreed to re-start the creche soon and to refer the case of Shrimati Uma Biswas to the Conciliation Officer whose decision was to be final.

32. On the re-starting of the colliery in October 1957 a new Creche Nurse was appointed on 18th October 1957. Then followed the incident of the alleged trespass into the quarters of the new Nurse and the assault on her by Ghose and others on 3rd November 1957 and as I have stated earlier in that case all the accused were acquitted on 15th April 1957 by the 2nd Class Magistrate, Asansol, in case No. G. 2630 of 1957. Reading through the judgment in that case, it does appear, as contended by the Union, that that prosecution was launched at the instance of the management. But to continue with the narration of the events, the management did not keep its undertaking to have Uma Biswas's case decided by the Conciliation Officer and the conciliation having ended in failure, Government was pleased to refer this dispute to adjudication.

33. The management contends that the claim put forward by the union that Shrimati Uma Biswas should be directed to be reinstated in service as her dismissal was illegal was out of the scope of the terms of the Government order of reference inasmuch as she had been dismissed for a certain misconduct and the case of the workman was that that dismissal was without justification and illegal as it was against the principles of natural justice and in violation of the standing orders; that as she was dismissed on 16th July 1957, the question of her reinstatement on the ground that the colliery had been re-opened could not arise, particularly when she was assured by the Manager's letter dated 12th August 1957 that she would get all her dues including lay-off compensation.

34. I think this contention of the management has no real substance and has been put forward only with a view to further prolong and obstruct any final decision of Uma Biswas's case. It is admitted that the management did not give her any employment after the mine was re-opened in January 1957 and that when the colliery was closed on 27th September 1956, the creche was also closed and Uma Biswas was also laid off. The subsequent events that followed and led to her dismissal flowed from the closure of the colliery on 27th September 1956. In my opinion the question of her dismissal from service is covered by the reference as the question referred for adjudication is whether the refusal of the management to re-employ her on re-starting of the colliery was improper and if so whether she should be reinstated or given any other alternative relief. The reference was made by Government after her dismissal and in my opinion it covers the question whether her dismissal was proper or not as one of the questions to be decided in this reference is whether she is entitled to

be reinstated in service. There would be no sense of reality and no finality to the points under adjudication, if her dismissal subsequent to the re-opening of the colliery were not to be gone into and this enquiry were to be confined only to the events that occurred till the colliery was re-started in January, 1957.

35. Now, on the merits, it is admitted that the creche was closed down when the colliery was closed on 27th September 1956 and that the creche was not re-opened when the colliery re-started working in January 1957. It is also admitted that Shrimati Uma Biswas was not given any employment from the date the colliery was closed down on 27th September 1956, till she was dismissed by the company's letter dated 16th July 1957. Now, it does appear from the correspondence Annexure 'A' series that in August 1956 even prior to the closing of the colliery in September 1956, there had been some trouble between the management and Uma Biswas over the quarters to be provided to her. When she was employed she was provided accommodation in the creche building but the management wanted her to shift to other quarters which according to her was not fit to be occupied by a single female as it was without any latrine, kitchen or bath room and had no compound wall or fencing. This matter had not been settled by the time the colliery was closed down and along with it the creche, in September 1956. But it is not difficult to imagine that Uma Biswas had by then incurred the displeasure of the management over her refusal to occupy the new quarters. On the re-opening of the colliery, the creche was not re-started. Apart from the fact that this was clearly wrong, Uma Biswas was also not paid any compensation or her wages during the period the creche was closed. After the re-opening of the colliery in January 1957 the manager addressed a letter to her on 16th February 1957 asking her explanation for certain missing articles. By her letter dated 18th February 1957 she denied responsibility for the alleged missing articles. Thereafter nothing further was done for 5 months, during which the management did not pay her any wages, till by the manager's letter dated 16th July 1957 she was informed that her explanation was found unsatisfactory and it was alleged that she has not seen the Director when asked to do so and she was asked to collect her dues. It is admitted that no enquiry was held on that charge, if the letter of the manager dated 16th February 1957 may at all be called a charge sheet, even though she denied the charges. It is clear that this dismissal was in violation of the standing orders in force in the coal industry and admittedly applicable to this colliery, which provide for a proper charge being framed and an enquiry being held, before a workman can be dismissed from service for any misconduct. Her dismissal was thus clearly illegal under the standing orders of the company and that is probably the reason why the management was so strenuously urging that the question of her dismissal should not be gone into. It is further relevant to note that during the period of 5 months from the Manager's letter of 16th February 1957 and the order of dismissal dated 16th July 1957 she had made several representations to various authorities against her being kept out of employment (See Annexure 2 and Annexure 'A' to 'C' series to Annexure 34 of the Union's written statement). She protested against this order of dismissal by her letter dated 5th August 1957 and after the strike of September 1957 under the agreement of 22nd September 1957 the management agreed to refer her case to the Conciliation Officer. Soon thereafter in October 1957 the creche was re-started and a new creche attendant was appointed. Then followed the criminal prosecution against Ghose and Bhar and others on the charges of having assaulted the new creche nurse. On the pretext of this case the management did not attend before the Conciliation Officer and he was unable to do anything. I cannot help stating that the management's entire conduct in the case of Miss Uma Biswas has been thoroughly *mala fide* and that it had shown scant respect to the agreement which it entered into on 22nd September 1957. At least in the case of Miss Uma Biswas, I have not the least doubt that the management never intended to honour that agreement, and that the conciliation was not effective because of the management's sad attitude.

In the circumstances, I am satisfied that the refusal of the management to give employment to Uma Biswas after the re-starting of the colliery in January 1957 was improper and that her subsequent dismissal was illegal and unjustified and that she is entitled to be reinstated.

I therefore direct that the company shall reinstate Shrimati Uma Biswas in service as a Creche attendant on her reporting for duty within 15 days from the date this award becomes enforceable. She will be entitled to continuity of her past services. I further direct that the management shall pay her wages (basic pay and Dearness allowance) for the period from the date the colliery re-started.

in January 1957 till the date of her reinstatement. The amount shall be calculated and paid to her within a week from the date she reports for duty.

As the union has succeeded substantially in this case, I direct the Company to pay the union Rs. 150 as costs.

(Sd.) SALIM M. MERCHANT,

Chairman.

Dhanbad, the 29th December, 1958.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

[No. LR II/2(34)/58.]

New Delhi, the 17th January 1959

S.O. 202.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of Shri Salim M. Merchant, Chairman, Central Government Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the B. N. Mondal's Deoli Colliery and their workmen represented by the Colliery Mazdoor Sangh.

BEFORE SHRI SALIM M. MERCHANT, CHAIRMAN, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD—ARBITRATOR

REFERENCE No. 30 OF 1958.

**Employers in relation to B. N. Mondal's
Deoli Colliery**

AND

Their workmen represented by the Colliery Mazdoor Sangh.

Re: Arbitration under section 10A of the Industrial Disputes Act, 1947

(Act XIV of 1947).

APPEARANCES:

Shri D. L. Sen Gupta, Advocate with Shri Kanti Metha, Vice President, and Shri R. N. Sharma, M.L.A., General Secretary, Colliery Mazdoor Sangh, Dhanbad,—*for the workmen.*

Shri D. Narsingh, Advocate, and later Shri B. N. Mondal, Partner, Messrs. B. N. Mondal & Co.—*for the employers.*

State: West Bengal

Industry: Coal

AWARD

By an arbitration agreement dated the 7th February, 1958, made under sub-section (1) of section 10A of the Industrial Disputes Act, 1947 (XIV of 1947), the employers in relation to B. N. Mondal's Deoli Colliery and the workmen of that colliery as represented by the Colliery Mazdoor Sangh, referred the industrial dispute in respect of the following matters specified in the said agreement to my arbitration:

"Whether the closure of Deoli Colliery justified and to what relief the workmen are entitled."

2. After the said arbitration agreement was signed the Government of India, Ministry of Labour and Employment, by Order No: LR II-1(2)/58, dated the 12th May, 1958 in pursuance of sub-section (3) of section 10A of the Industrial Disputes Act 1947 (XIV of 1947) was pleased to publish the said arbitration agreement

3. Thereafter notices were issued by me upon the parties to file their respective written statements. The Colliery Mazdoor Sangh filed its written statement on 20th June, 1958, and the employers filed written statement in reply thereto on 21st July, 1958.

4. The dispute was thereafter taken up for hearing at Dhanbad and after being part heard, at the hearing on the 26th December, 1958 on the joint application of the parties, the hearing was adjourned to the 5th January, 1959 to be heard at Calcutta by consent of the parties. At the hearing on the 5th January, 1959, the parties filed before me the terms of settlement which had been reached between them and prayed that an award be made in terms thereof. A copy of the said

terms of settlement is annexed hereto and marked Annexure A. As I am satisfied that on the facts and circumstances of the case the terms of settlement are fair and reasonable, I make an award in terms of that settlement which shall form part of this award. This arbitration award is submitted to Government as required by sub-section (4) of section 10A of the Industrial Disputes Act, 1947 (XIV of 1947).

Encl: Annexure A.
Dated, the 6th January, 1959.

(Sd.) SALIM M. MERCHANT,
Chairman,
Central Government Industrial Tribunal, Dhanbad.
Arbitrator.

BEFORE THE ARBITRATOR SHRI SALIM M. MERCHANT, CHAIRMAN,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

Arbitration under section 10A of the Industrial Disputes Act, 1947 (Act XIV of 1947) in respect of the industrial dispute between B. N. Mondal's Deoli Colliery and their workmen as represented by the Colliery Mazdoor Sangh,

AND

Re: Reference No. 30 of 1958.

Sir,

We, the parties to the above industrial dispute, have reached the following settlement and pray that an Award be made by you in terms thereof:

1. The management agrees to reinstate all permanent workers in their former posts by 15th March, 1959 on their reporting themselves for duty by that date.

2. A list of unemployed temporary workers category-wise and in accordance with seniority will be prepared in consultation with the Union by 15th March, 1959 and all future vacancies will be filled up after giving preference to the senior-most in the list.

3. The management agrees to pay Rs. 30,000/- (Rupees Thirty thousand) as lay off compensation to be distributed equally between all the workmen who were on the muster roll of the Deoli Colliery on 26th December, 1957, except those who continued to work during the period of lay off from 27th December, 1957 to 5th May, 1958. The payment as stated above shall be made by the management in consultation with Shri R. N. Sharma, President, and Shri Sfatick Banerjee, Secretary, the Deoli Branch of the Colliery Mazdoor Sangh in one instalment on or before 15th March, 1959.

4. In case of permanent as well as temporary workers, the period of their involuntary idleness should be treated as period of lay-off and full attendance for the said period should be taken into consideration for the purpose of bonus and annual leave.

5. All payments of lay-off compensation and bonus in terms of clauses 3 and 4 above shall be completed by 15th March, 1959.

6. In addition to the costs for adjournment already paid, the management agrees to pay Rs. 1,500 (Rupees one thousand and five hundred) as the costs of this arbitration to the Colliery Mazdoor Sangh on or before 15th March, 1959.

Parties pray that an Award be made and published in terms of this agreement.

For and on behalf of B. N. Mondal's
Deoli Colliery.

In the presence of:

(Sd.) Illegible
Calcutta:
5-1-1959.

B. N. MONDAL, Partner
For and on behalf of the Colliery Mazdoor Sangh.

In the presence of:

(Sd.) Illegible
Calcutta:
5-1-1959.

KANTI MEHTA, Vice-President.

Taken on File

(Sd.) SALIM M. MERCHANT,
Calcutta, 6-1-1959.
[No. LR.II-1(2)58.]

ORDERS

New Delhi, the 15th January 1959

S.O. 203.—Whereas the Joint Working Committee of the Indian Mining Association, Indian Mining Federation and Indian Colliery Owners' Association has raised a doubt relating to the interpretation of the Award of All India Industrial Tribunal (Colliery Disputes) published in the Gazette of India Extraordinary Part II Section 3, dated the 26th May, 1956 *vide* S.R.O. 1224, dated the 18th May, 1956, as modified by the decision of the Labour Appellate Tribunal dated the 29th January, 1957;

And whereas in the opinion of the Central Government, a doubt has arisen as to the correct interpretation of paragraph 74 of the said decision of the Labour Appellate Tribunal on the questions specified in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by section 7-A and sub-section (1) of section 36 A of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Shri F. Jeejeebhoy, Chairman, Labour Appellate Tribunal, as the Presiding Officer with headquarters at Calcutta and refers the said questions for decision to the said Tribunal.

SCHEDULE

- (i) Whether the additional dearness allowance of Rs. 4-14-0 per mensem is payable in the succeeding half year for every rise of 10 points over 102 in the average of the monthly figures of the All India Average Consumer Price Index Numbers in the preceding half year?
- (ii) If not, what should be the basis for the payment of the increased dearness allowance?
- (iii) What should be the basis for reducing the increased dearness allowance once granted?

[No. LRII-3(21)/58.]

S.O. 204.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to M/s. Bikaner Gypsums Ltd., and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Delhi constituted under section 7A of the said Act.

SCHEDULE

1. Whether the termination of the services of Sarvashri Noora (Chowkidar), Nathu (Mazdoor) and Narsi Ram (Mazdoor) is justified, and if not, to what relief they are entitled.
2. Whether Sarvashri Chuni Lal, Yaqub Khan Teli, Sugna Meghwal, Kana, Bhuro and Hakoo Teli were working in the mines as village piece workers immediately before 1st October, 1958, and if so, whether the management is justified in refusing them employment as village piece workers after the said date and if not, to what relief they are entitled.
3. Whether the termination of services of Sarvashri Abdul (Driver 'B') Om Parkash (Acting Clerk) and Narpal Singh (Sampler) is justified, and if not, to what relief they are entitled.

[No. LRII-64 (14)/58-1.]

New Delhi, the 17th January 1959

S.O. 205.—Whereas the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the New Jemohari Khas Colliery, P.O. Jaykaynagar, Burdwan, and their workmen in respect of the matter specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

NOW, THEREFORE, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

THE SCHEDULE

Whether the management of New Jemehari Khas Colliery were justified in dismissing Shri Ramchandra Ahir and, if not, to what relief is he entitled?

[No. LRII-2(98)/58.]

S.O. 206.—Whereas the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the Upper Kajora Colliery, P.O. Kajoramgram, Burdwan, and their workmen in respect of the matters specified in the Schedule hereto annexed;

And Whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, Therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad constituted under section 7A of the said Act.

THE SCHEDULE

Whether the dismissal of Shri Chandradeo Singh, Depot Guard, was justified, and if not, to what relief is he entitled?

[No. LRII-2(99)/58.]

S.O. 207.—Whereas the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the Saunda Colliery of M/S. Bird and Co. (P) Ltd. and their workmen in respect of the matters specified in the Schedule hereto annexed;

AND WHEREAS, the Central Government considers it desirable to refer the said dispute for adjudication;

NOW, THEREFORE, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the dismissal of Sarvashri Subeylal, Underground Munshi, Barho Ram trammer (Looseman), Sothan Singh, Coal Cutting Machine Cooly and Ramnidhi, Drillman, was justified, and if not to what relief are they entitled?

[No. LRII/2(122)58.]

S.O. 208.—Whereas the Punjab and Sind Bank Limited, Dehra Dun, has raised a point relating to the interpretation of the award of the All-India Industrial Tribunal (Bank Disputes), Bombay, constituted by the notification of the Government of India in the Ministry of Labour and Employment No. S.R.O. 35, dated the 5th January, 1952, as modified by the decision of the Labour Appellate Tribunal in the manner referred to in section 3 of the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955);

And whereas the Central Government is of opinion that a difficulty or doubt has arisen as to the interpretation of paragraph 536 of the said award in respect of the matter specified in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby refers the said matter for decision to Shri F. Jeejeebhoy, Chairman, Labour Appellate Tribunal, constituted under section 5 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950).

SCHEDULE

Whether the expression 'language area of the person so transferred' occurring in the second sentence of paragraph 536 of the Award of the All-India Industrial Tribunal (Bank Disputes) constituted by the notification of the Government of India in the Ministry of Labour No. S.R.O. 35, dated the 5th January, 1952, modified as aforesaid, is synonymous with the expression 'language areas in which an employee has been serving' occurring in the third sentence of the said paragraph and, if not, whether a member of the subordinate staff serving outside the area of his language (mother tongue) can be transferred to the area of his language (mother tongue).

[No. LR II-10(136)/58.]

CORRIGENDA

New Delhi, the 19th January 1959

S.O. 209.—In the Order of the Government of India in the Ministry of Labour and Employment S.O. 2484 published on page 2617 of the Gazette of India, Part II, Section 3(ii) dated the 29th November, 1958, for the words "Noodit—Jitpur Colliery", wherever they occur, read "Noonodih—Jitpur Colliery".

No. [No. LR II-2(157)/58.]

K. D. HAJELA, Under Secy.

New Delhi, the 14th January 1959

S.O. 210.—Whereas the Central Government is of opinion that having regard to the terms and conditions of service applicable to the undermentioned classes of employees in the scheduled employment *viz.*, employment in building operations, it is not necessary to fix minimum wages in respect of such classes of employees:

Now, therefore, in exercise of the powers conferred by sub-section (2-A) of section 26 of the Minimum Wages Act, 1948 (11 of 1948), the Central Government hereby directs that the provisions of the said Act shall not apply in relation to the said classes of employees.

1. *Overseas Communications Service.*

- (i) Carpenters
- (ii) Junior Painters
- (iii) Mazdoors
- (iv) Masons
- (v) Sweepers
- (vi) Electrical Fitter
- (vii) Mistry

2. *Telegraph Work shops at Calcutta and Jabalpur.*

- (i) Masons
- (ii) Mazdoors
- (iii) Fitter (General) Grade I.

3. *Telephone workshops at Bombay.*

- (i) Masons
- (ii) Mazdoors
- (iii) Fitter (General) Grade I.

[No. LWI-1-8(5)/57.]

K. N. NAMBIAR, Dy. Secy.

ORDER

New Delhi, the 19th January 1959

S.O. 211.—In exercise of the powers conferred by section 73-F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts for a further period of one year with effect from the 22nd January, 1959, from the payment of the employer's special contribution leviable under Chapter V-A of the said Act, every factory wherein ten or more persons are not employed, or were not employed at any time during the preceding twelve months, by the principal employer directly or by or through an immediate employer, even though twenty or more persons are or were working in the premises.

[No. HI-6(98)/59.]

BALWANT SINGH, Under Secy.

MINISTRY OF INFORMATION AND BROADCASTING

ORDER

New Delhi, the 15th January 1959

S.O. 212.—The Central Government hereby: (a) directs, in pursuance of the provisions of the Order of the Government of India in the Ministry of Information and Broadcasting No. S.R.O. 3805 dated the 26th December, 1955 and in modification of the Order of the Government of India in the Ministry of Information and Broadcasting No. S. O. 2683 dated the 19th December, 1958 that the Advisory Panel of the Central Board of Film Censors at Bombay shall consist of of 31 members with immediate effect; and

(b) appoints, after consultation with the Central Board of Film Censors, the following persons as members of Advisory Panel of the said Board at Bombay with immediate effect in exercise of the powers conferred by sub-rule (3) of rule 8 read with sub-rule (2) of rule 9 of the Cinematograph (Censorship) Rules, 1958:—

1. Shri Ratan Lal Joshi
2. Shri M. A. Razzaq
3. Shri Murli Thakur

[No. 14/3/57-FC.]

D. R. KHANNA, Under Secy.

MINISTRY OF COMMERCE AND INDUSTRY

New Delhi, the 8th October 1958

S.O. 213.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules regulating the method of recruitment to certain Class III posts under the Office of the All India Handloom Board, Bombay, namely:—

1. These rules may be called the All India Handloom Board Recruitment to Class III posts Rules, 1958.

2. These rules shall apply for recruitment to posts specified in column 1 of the schedule to these rules and the present number of posts, the clarification thereof and the scale of pay shall be specified in column 2 to 5 of the said Schedule.
3. The method of recruitment, the age limit and qualifications for recruitment to the said posts and other matters relating thereto shall be as in column 6 to 15 of the aforesaid Schedule.

[No. 3(48)-Tex(c)/58.]

Office of the Textile

Statement to be adopted for isolated posts for which

Name of post	Its Classification, whether Gazetted or Non-Gazetted, whether Ministerial or Non-Ministerial	Scale of pay	Duties	No. of posts	Percentage of posts to be filled by			
					Direct recruitment	By Selection	By Seniority-cum-fitness	Transfer
1	2	3	4	5	6	7	8	9
Artist	Non-Gazetted Class III Non-Ministerial.	250-10-300-15 450.	..	1	By Direct	recruitment only.		
Inspector Grade I.	Do.	Do.	..	26	By direct	promotion falling, which by recruitment.		

Commissioner, Bombay.*Detailed recruitment Rules are not necessary*

For Direct recruitment only		For promotion/Transfer only			Composition of Departmental Promotion Committee	
Age limit	Educational qualification	Period of Probation, if any	Whether age and educational qualification prescribed for direct recruitment will apply in case of appointment by promotion/transfer	Cadre/Source from which promotion/transfer are to be made		
10	11	12	13	14	15	
28 years	<i>Essential</i> : Pass in Matriculation. Diploma in Printing or Freehand Drawing, from a recognised School of Art, experience of organising exhibitions, display of models etc. for a period of not less than 2 years. <i>Desirable</i> : Ability to prepare charts and arranging for display of advertisements.	6 months.	..	..	Secretary Board, Industrial Adviser (Textile-Production), & Under Secretary (Establishment) as members. Approval of the Textile Commissioner is necessary before any appointments are made.	Handloom Industrial
28 years	<i>For the posts in Publicity Branch—</i> <i>Essential</i> : (i) Pass in Matriculation. (ii) Experience in publicity work for at least 3 years. (iii) Experience in organising exhibition including erection and management of stalls. <i>Desirable</i> : (i) Degree in Arts or Science of a recognised University. (ii) Experience of having worked in an advertising consultants' office for a period of not less than 3 years. (iii) Experience of office routine. (iv) Knowledge of local language. <i>For other posts</i> : (i) Degree or Diploma in Textile Technology. In the latter case the candidates should also be a Matriculate. (ii) Experience or knowledge of saleability of different types of cloths in different parts of the country. (iii) Practical knowledge of handloom industry. (iv) Knowledge of export trade desirable.	6 months.	(The educational qualifications prescribed for direct recruitment will apply to promotees also but not the age limit.)	The Inspector Gr. II or Technical Assistant Grade II.	Ditto.	

1	2	3	4	5	6	7	8	9
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Inspector Grade II.	Non-Gazetted Class III-Non-Minister- ial.	160-10 330.	..	2	By promotion falling which by direct recruitment.
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Inspector Grade II.	Do.	160-10- 330.	..	3	100% by dir- ect. cruit- ment.
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Draftsman	Do.	100-5- 120-6- 155-EB- 6-185.	..	1	By direct recruitment.
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Technical Superin- tendent.	Non-Gazetted Class III Non-Ministerial.	300-20- 400	..	3	No percentage is fixed as the posts are principally filled by selection from qualified departmental candidates failing which by direct recruitment.
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10	11	12	13	14	15
	(v) Should be prepared to undertake extensive touring work.				
28 years.	Ditto.	6 months.	Secretary Handloom Board, Industrial Adviser (Textile Production), and Under Secretary (Estt.) as members. Approval of the Textile Commissioner is necessary before any appointments are made.
25 years relaxable in case of Scheduled Castes/Scheduled Tribes, displaced persons and other special categories in accordance with the General orders issued from time to time by the Government of India.	1st Class Degree in Mathematics, Statistics or Economics or a 2nd Class M.A. in one of these subjects. Preference will be given to persons possessing a Diploma from the Statistical Institute, Calcutta.	6 months.	..	..	Ditto.
28 years. (Relaxable in the case of candidates with considerable experience).	Matriculation or its equivalent with a Diploma in Drawing preferably with previous experience as Draftsman.	6 months.	..	..	Do.
33 years. (Relaxable in exceptional cases).	Degree/Diploma in Textile Technology from a recognised University/Institution. Should have worked in a handloom weaving establishment for a period of 5 years in a responsible capacity. Should be able to handle weavers. Should be conversant with the manufacture of handloom fabrics in different designs involving the use of usual appliances. Should be conversant with costing methods. Knowledge of designing, Dyeing and Printing desirable.	6 months.	Educational qualifications apply in the case of promotees but not the age limit.	From T.A. Gr. I, T.A. Gr. II, Inspector Gr. I and Inspector Gr. II, if suitable candidates with the required qualifications are available.	Secretary (Handloom, Board), Hon. Adviser (Designs), Under Secretary (Estt.) and such of the officers in this organisation as would be co-opted.

1	2	3	4	5	6	7	8	9
Art Designer (for one post each at Bombay, Madras, Banaras and Calcutta.	Non-Gazetted Class II Non-Ministerial.	250-10-300-15-450		4	By direct recruitment.			
Art Designer (for one post each at Bombay, Banaras & Calcutta.	Do.	250-10-300-15-450.		4		Do.		
Designer (Naksha-maker)	Do.	250-10-300-15-450		3		Do.		
Photographer.	Do.	250-10-300-15-450.		1		Do.		

10	11	12	13	14	15
33 years. (Relax- able in excep- tional cases.)	Should be able to read and write the Regional language. Must have 10 years ex- perience in design work in handloom weaving centres and in Naksha making and be capable of transferring sketch de- signs on to graph paper.	6 months	..	..	Secretary (Handloom Board), Hon. Ad- viser (Designs), Un- der Secretary (Estt.) and such of officers in this organisation as would be co- opted
Do.	Should be able to read and write the Regional language. Must have 5 years experience in the collection and re- search on Designs and in the field of folk art in handloom craft centres.	6 months.	..	..	Do.
Do.	Should be able to read & write the Regional language. Knowledge of designing for hand- loom industry. Know- ledge of translating de- signs on to point paper. 10 years experience in preparing Designs suit- able for woven fabrics and in transferring the designs to point paper out of which at least 3 years experience should be in practical designs work in the styles of de- sign prevalent in the locality where the cen- tre is located. Qualifi- cations relaxable in the case of hereditary Weavers/Designers skilled in designing fabrics prevalent in the locality where the centre is located.	6 months.	..	..	Do.
Do.	Must be an expert Photo- grapher. Candidates should be able to take photoprints of new de- signs & should be pre- pared to travel exten- sively.	6 months.	..	..	Do.

1	2	3	4	5	6	7	8	9
Dyer	Non-Gazetted Class III Non-Ministerial.	250-10 300- 15- 450.	..	3				By direct recruitment.

Pattern Maker	Do.	250-10 -300- 15- 450.	..	3			Do.
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10	11	12	13	14	15
33 yrs. (Relax- able in excep- tional cases.)	Degree of Diploma of a recognised Technical Institution in Textile Chemistry, Dyeing and other processing. In the case of Diploma holders, they should also be Matriculates. Technical qualifica- tions are relaxable in the case of candidates who are hereditary dyers with considerable skill of the locality where the centre is situated; should be familiar with dyeing of fabrics like cotton, silk, rayon and wool; should have at least 5 yrs. experience as a Dyer handling majority of these fabrics. Experience of handling yarn in small lots. Special consider- ation will be given to candidates with know- ledge of vegetable dye- ing.	6 months	Secretary (Handloom Board), Hon. Ad- viser (Designs), Un- der Secretary (Estt.) and such of Officers in this organisation as would be co- opted.
Do.	1. Matriculation or its equivalent. 2. Diploma or certificate of a recog- nised Institution in Tex- tile Manufacture. Both relaxable in the case of hereditary artisans, skil- led in working jacquard and in the production of styles of designs preva- lent in the locality where the centre is situated. Holders of Diploma or certificate in Textile Manufacture must have at least 5 yrs. experience in translating point pa- per designs on the fab- rics, in guiding weavers and helping them weave new designs. In the case of hereditary arti- sans in whose case tech- nical qualifications are to be waived, the period of experience will be 10 yrs. on the same lines. Experience in harness building, card cutting and Jacquard work es- sential.	6 months	..	..	Do.

1	2	3	4	5	6	7	8	9
Assistant Designer	Non-Gazetted Class III Non-Ministerial.	Rs. 250-10-300-15-450	..	1	By direct recruitment			
Expert Weaver	Do.	250-10-300-15-450	..	6		Do.		
Weaver (for the Design Centre at Kanchipuram, Surat and Chanderi)	Do.	160-10-330.	..	18		Do.		
Weaver (for the designs Centre at Bombay, Madras, Calcutta and Banaras)	Do.	160-10-330	..	26		Do.		

10	11	12	13	14	15
28 yrs. (Relax- able in excep- tional cases.)	I. Matriculate, (2) Dip- loma or certificate of a recognised institution in Textile Manufacture. (3) Ability to prepare designs suitable for woven fabrics & to trans- fer the designs to graph paper making the nature of weave indicating loom equipment. (4)*Experi- ence in practical designs work for at least 3 years. (5) Training and experi- ence in co-operation desired.	6 months	..	..	Secretary (Handloom Board) Hon. Ad- viser (Designs), Under Secretary (Estt.) and such of the Officers in this organisation as would be co-opted.
33 yrs. (Relax- able in excep- tional cases.)	Must be hereditary wea- vers with considerable skill in his craft. Candi- date must be able to carry out Technical Research and to evolve new tech- niques of Production, to conduct experiment on the manufacture of old traditional types of fab- rics & on the production of new designs, and to weave different types of fabrics with designs.	6 months	..	..	Do.
Do.	Should be able to read & write the Regional lan- guage. Should be here- ditary weavers from the locality where the centre has to be estab- lished with at least 10 years working on Hand- loom in that area. Ex- perience in handloom weaving, weaving preparatory & finishing processes. Experience of weaving, type of fab- rics of that locality; Can- didates should have skill and initiative to weave new designs; qualifica- tions relaxable in the case of suitable heredi- tary weavers.	6 months	..	..	Do.
Do.	Candidate should be able to read and write in Re- gional Language. Can- didates should be a wea- ver with at least 10 years experience in the requi- red styles of handloom weaving, weaving pre- paratory and finishing processes. Knowledge of textile designing de- sirable.	6 months	..	..	Do.

1	2	3	4	5	6	7	8	9
Block Printer	Non Gazetted Class III Non-Ministerial.	160-10 -330	..	3				By direct recruitment.

Fancy Jobber	Do.	80-5* 120-EB 8-200- 10/2-220	1	100%	Do.
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Sizer	Do.	60-3† 81-EB -4-125- 5-130*	1		Do.
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NOTE.— Age limit, educational qualifications, the period of previous experience etc., are relaxed in the statement.

* To assist weavers in the preparatory processes mainly weaving, drawing, in and typing of

† Relaxable in case of Scheduled Castes/Tribes, displaced persons and other special categories

‡ To size warps, dress and beam them; to size cotton yarn in hank form; to assist

IO	II	12	13	14	15
33 yrs. (Relax- able in except- tional cases.)	Candidate should have considerable experience in Block Printing, Screen Printing and Discharge Printing in silk etc. For one of the posts persons familiar with resist and indigo process of Printing will be necessary. Hereditary Chippas with knowledge and experience in Block Printing, Screen printing and Discharge printing will be given preference.	6 months	..	..	Secretary (Handloom Board Hon. Adviser (Designs), Under Secretary Estt.) & such of the Offices in this organisation as would be co-opted.
†33 years	Candidate should be able to read and write in his regional language. Should have experience of at least five years in preparatory processes of handloom weaving, particularly in preparing warps, drawing in through healds and reeds and in typing up harnesses. Hereditary artisans with experience in warping, drawing in through healds and reeds and in typing up harnesses will be given preference. Age limit, educational qualifications, the period of previous experience etc., are relaxable in special cases by the Head of the department.	6 months	..	..	The Secretary, All India Handloom Board, Bombay, The Director (Designs) and any officer from the Design Centre who may be co-opted as a member of the Committee.
†33 years	Candidate should be able to read and write in his regional language. Should have at least 5 years experience in sizing cotton warp and yarn and in dressing and beaming warps. Hereditary artisans with experience in sizing and in preparing warps will be given preference. Age limit, educational qualifications, the period of previous experience etc., are relaxable in special cases by the Head of the Department.	6 months			Do,

able in special cases by the Head of the Department in respect of all the posts mentioned in harnesses.
in accordance with the general orders issued from time to time by the Government of India.
in warping.

[No. 3(48)-Tex (C)/58.]
M. S. SADASIVAN, Under Secy.

New Delhi, the 16th January 1959

S.O. 214/IDRA/6/Am.(1).—In exercise of the powers conferred by section 6 of the Industries (Development & Regulation) Act, 1951 (65 of 1951), the Central Government hereby appoints Shri S. R. Kaiwar, I.C.S., Secretary to the Government of Madras, Department of Industries, Labour, and Cooperation Department, Madras, and Shri P. D. Kasbekar, I.A.S., Joint Registrar of Cooperative Societies (Sugar), Poona, as members of the Development Council for Sugar Industry with effect from 31st December, 1958, and makes the following amendments in the Order of the Government of India, in the Ministry of Commerce and Industry No. S.R.O. 2002, dated the 24th September, 1958, namely:—

In the said order—after entry No. 19, the following entries shall be inserted, namely:—

19A. Shri S. R. Kaiwar, I.C.S., Secretary, to the Government of Madras, Industries, Labour & Cooperation Department, Madras.

19B. Shri P. D. Kasbekar, I.A.S., Joint Registrar of Cooperative Societies (Sugar), Poona.

[No. 4(41)IA(II)(G)/58.]

A. K. CHAKRAVARTI, Under Secy.

Bombay, the 17th January 1959

S.O. 215.—In exercise of the powers conferred on me by sub-clause (1) of clause 3 of the Cotton Control Order, 1955, I hereby direct that the following further amendment shall be made in the Textile Commissioner's Notification No. S.O. 2076, dated the 27th August, 1958, namely:—

In the said Notification, for Schedule 'B' the following shall be substituted namely:—

"SCHEDULE 'B' "

Shri R. G. Saraiya.
Shri Dwarkadas Jambadas.
Shri A. B. Wadia.
Shri Jehangir P. Patel.

Shri Gatulal Rangildas.
Shri R. B. Desai.
Mr. A. Mueller.
Shri R. D. Shah.

(Sd.) D. S. JOSHI,
Textile Commissioner.

[No. F. 24(44)Tex.(A)/57.]

V. V. NENE, Under Secy.

ORDER

New Delhi, the 20th January 1959

S.O. 216.—In exercise of the powers conferred by section 5 of the Industries (Development and Regulation) Act, 1951 (65 of 1951) read with rules 3 and 4 of the Central Advisory/Council (Procedural) Rules, 1952, the Central Government hereby appoints the following persons to be members of the Central Advisory Council, namely:—

1. Minister for Commerce and Industry—Chairman.

To represent the interests of owners of industrial undertakings in scheduled industries.

2. Shri Kamalanayan Bajaj, M.P., 2, Hardinge Avenue, New Delhi.

3. Shri K. Kumar Birla, 8, India Exchange Place, Calcutta—1.

4. Shri Kasturbhai Lalbhai, Pankore's Naka, Ahmedabad.

5. Shri B. M. Chinai, M.P., The National Rayon Corporation Ltd., Ewart House, Bruce Street, Fort, Bombay—1.

6. Lala Charat Ram, The Delhi Cloth and General Mills Co. Ltd., Bara Hindu Rao, P.B. No. 1039, Delhi.

7. Prof. M. P. Gandhi, Nanabhai Mansion, Sir P. M. Road, Fort, Bombay—1.

8. Shri G. D. Birla, 8, India Exchange Place, Calcutta—1.
9. Shri R. Venkataswamy Naidu, Peclamedu P.O., Coimbatore.
10. Shri S. L. Kirloskar, Bungalow No. 1, Modi Baug, Ganeshkhind Road, Poona—5.
11. Shri V. Ramakrishna, 55, Peters Road, Madras—6.
12. Dr. Vikram A. Sarabhai, Chidambaram, Ahmedabad—13
13. Dr. R. R. Hattiangadi, Cement Agencies (Private) Ltd., Mgg. Agents, The Associated Cement Co. Ltd., Cement House, 121, Queen's Road, Bombay—1.

To represent the interests of persons employed in industrial undertakings in scheduled industries—

14. Shri S. R. Vasavada, President, I.N.T.U.C., Textile Labour Association, Gandhi Majdoor Sevalaya, Bhadra, Ahmedabad.
15. Mr. Michael Jhon, President, Tata Workers' Union, 17, K Road, Jamshedpur.
16. Shri Bagram Tulpule, General Secretary, Hind Mazdoor Sabha, Servant of India Society's Home, Sardar Patel Road, Bombay—4.

To represent the interests of consumers of goods manufactured or produced by scheduled industries—

17. Shri B. C. Ghose, M.P., 63/1, Mahanirvan Road, Calcutta—29.
18. Shrimati Kamladevi Chattopadhyaya, Chairman, All-India Handicrafts Board, Queensway (A) Barracks, New Delhi.
19. Shri Asoka Mehta, M.P., 5, Dadyseth Road, Babulnath, Bombay—7.
20. Shri Mangtu Ram Jaipuria, Swadeshi House, Kanpur.
21. Pt. H. N. Kunzru, Servants of India Society, 18, Ferozshah Road, New Delhi.

To represent other interests including primary producers

22. Shri A. Ramaswami Mudaliar, M.P., "India Steamship House", 21, Old Court House Street, Calcutta—1.
23. Shri M. A. Chidambaram Chettiar, "Chettinad House", Adayar, Madras.
24. Shri N. D. Sahukar, Chairman, The All-India Manufacturers' Organisation, 4th Floor, Co-operative Insurance Building, Sir Pheroze Shah Mehta Road, Fort, Bombay—1.
25. Dr. V. K. R. V. Rao, Vice-Chancellor, University of Delhi, Delhi—8
26. Prof. M. S. Thacker, Council of Scientific and Industrial Research, Old Mill Road, New Delhi.

and (b) one other member to be hereafter specified by the Central Government who will be a persons capable of representing the interests of persons employed in industrial undertakings in scheduled industries.

[No. 1(17)IA(II)(G)/58.]

K. C. MADAPPA, Dy. Secy.

(Department of Company Law Administration)

New Delhi, the 13th January 1959

S.O. 217.—In exercise of the powers conferred by clause (a) of sub-section (1) of the Section 448 of the Companies Act, 1956 (I of 1956), the Central Government hereby appoints Shri B. Mopuri Reddy, III Deputy Registrar of the High Court of Mysore, Bangalore, to be the *ex-officio*, Official Liquidator attached to Mysore High Court with effect from the date he assumes charge until further orders.

[No. 15(9)-Admn./58.]

New Delhi, the 14th January 1959

S.O. 218.—In exercise of the powers conferred by clause (a) of sub-section (1) of the section 448 of the Companies Act, 1956 (I of 1956), the Central Government hereby appoints Shri H. V. Vaishnav, clerk of the Court, Distt. Court,

Sorath, to be the *ex-officio*, Official Liquidator attached to Sorath District with effect from the date he assumes charge until further orders.

[No. F. 2/5/58-C. L. III.]

P. B. SAHARYA, Under Secy.

(Indian Standard Institution)

New Delhi, the 16th January 1959

S.O. 219.—In pursuance of regulation 4 of the Indian Standards Institution (Certification Marks) Regulation, 1955 the Indian Standards Institution hereby notifies that an amendment to the Indian Standard given in the Schedule hereto annexed has been issued under the powers conferred by sub-regulation (1) of regulation 3 of the said regulations.

THE SCHEDULE

Sl. No. and title of the Indian Standard amended	No. and date of Gazette Notification in which the establishment of the Indian Standard was notified	No. and date of Amendment	Brief Particulars of Amendment	Date of effect of the amendment
1 IS: 1174-1957 Definitions of Mica Terms	S.O. 1349 dated 12th July 1958 July 1958	No. 1 February 1959	(a) In line 2 of sub-clause 2.1.10 at page 3 the word 'condenser' has been deleted (b) Sub-clause 2-1-13 at page 3 has been replaced by a new sub-clause.	1st February 1959

Copies of this amendment slip are available, free of cost, with the Indian Standards Institution 'Manak Bhavan', 9 Mathura Road, New Delhi-1 and also its Branch Offices at (i) 40/40A Cawas Patel Street, Fort, Bombay-1, (ii) P-11 Mission Row Extension, Calcutta-1 and (iii) 2/21 First Line Beach, Madras-1.

[No. MDC/11(9).]

S.O. 220.—In exercise of the powers conferred by sub-regulations (2) and (3) of regulation 3 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies the issue of errata slips, particulars of which are given in column (4) of the Schedule hereto annexed, in respect of the Indian Standards specified in column (2) of the said Schedule.

THE SCHEDULE

Sl. No.	No. and title of Indian Standard	No. and date of Gazette Notification in which establishment of the Indian Standard was notified	Particulars of Errata Slips issued
1	2	3	4
1	IS: 458-1956 Specification for Concrete Pipes (With and Without Reinforcement)	S.R.O. 2823 dated 7th September, 1957	Fig 10 at page 14 has been replaced by a new Fig.
2	IS: 1268-1958 Specification for Handloom Worsted Lohis	S.O. 2654 dated 27th December 1958	In Table II at page 4 under column 'Width IN CM (or IN.)' against variety No. 4, '14 (or 56)' has been substituted for '68 (or 150)'.

Copies of these errata slips are available, free of cost, with the Indian Standards Institution 'Manak Bhavan', 9 Mathura Road, New Delhi-1 and also its Branch Offices at (i) 40/40A Cawas Patel Street, Fort, Bombay-1, (ii) P-11 Mission Row Extension, Calcutta-1 and (iii) 2/21 Fir Line Beach, Madras-1.

[No. MDC/11(10)]

New Delhi, the 19th January 1959

S.O. 221.— In pursuance of sub-regulations (2) and (3) of regulation 3 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian standards Institution hereby notifies that the Indian Standard, particulars of which are given in the Schedule hereto annexed, has been established during the period 1st to 15th January 1959.

THE SCHEDULE

Sl. No.	No and title of the Indian Standard established	No and title of the Indian Standard or Standards, if any, superseded by the new Indian Standard	Brief Particulars
1	2	3	4
1	IS:1248-1958 Specification for Electrical Indicating Instruments	..	This standard covers indicating ammeters, voltmeters, wattmeters, frequency indicators and power-factor indicators including multi-purpose, multi-range instruments in so far as they relate to the instruments named. It also covers centre-zero type of voltmeters and ammeters. (Price Rs. 5.00)

Copies of this Indian Standard are available, for sale, with the Indian Standards Institution 'Manak Bhavan', 9 Mathura Road, New Delhi-1 and also its Branch Offices at (i) 40/40A Cawasji Patel Street, Fort, Bombay-1, (ii) P-11 Mission Row Extension, Calcutta-1 and (iii) 2/21 First Line Beach, Madras-1.

[No. MDC/11(4)]

C. N. MODAWAL,
Dy. Director (Marks.)

